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1 (Proceedings commenced at 10:22 a.m.)

2 THE CLERK: THE CLERK: This is the United States v  
3 Martinez 17-cr-281.

4 THE COURT: Can you come up for a minute?

5 MS. ARGENTIERI: Sure.

6 MR. RICCO: Yes.

7 (Discussion held at sidebar)

8 THE COURT: I'm not giving a charge on venues. Some  
9 years ago, I wrote an opinion explaining why.

10 MS. ARGENTIERI: Okay.

11 THE COURT: Number one, venue is not an element to  
12 the offense. It does not -- it's clear case law for the  
13 briefings, I don't have to tell you.

14 Number two, it doesn't have to be proven beyond a  
15 reasonable doubt; and number three, which is, you know, there's  
16 an argument to be made but nobody makes it, that it could be  
17 subject to harmless error. Now, it's just particularly and in  
18 most of these cases where the difference between the Eastern  
19 and Southern District. So, I'm not giving it.

20 MS. ARGENTIERI: Okay.

21 THE COURT: And finally, don't lose any sleep over  
22 it --

23 MS. ARGENTIERI: Okay.

24 THE COURT: -- because if there was ever harmless  
25 beyond a reasonable doubt, it would be in this case.

1 MS. ARGENTIERI: Understood, Judge.

2 THE COURT: But look for my case because what happens  
3 is people just follow it the way it went before and they don't  
4 stop to ask why, and it started bothering me in a case that I  
5 had when I was an assistant which involved a -- what where then  
6 Croatian nationalists, who had hijacked a plane from Kennedy  
7 Airport. They took off from Kennedy on the way to Buffalo and  
8 they planted a bomb in Grand Central Station and when the  
9 police were trying to -- the bomb squad were trying to disarm  
10 the bomb it exploded and killed a police officer. And there,  
11 they wanted me -- they wanted me to -- well, not me, I didn't  
12 want anything -- Judge Bartels, who was then -- God rest his  
13 soul -- who was in charge of the case, actually charged the  
14 jury that they had to find venue beyond a reasonable doubt, and  
15 that meant the hijacking of the plane had to begin before it  
16 got out of the airspace of JFK which as you know, doesn't take  
17 very long. And I thought to myself, this is just ridiculous.

18 MS. ARGENTIERI: Okay.

19 THE COURT: It doesn't make any sense that they had  
20 to acquit if they found -- well, fortunately the jury wasn't  
21 going to acquit in a case like that, on a ground like that, but  
22 that's when I started thinking that this is absurd. And you  
23 know, you've to -- you -- there are a lot of things that I've  
24 written on that nobody pays any attention to, such a thing as  
25 the calf's path, you know? It's just as easy do what everybody

1 else has done and stop and think why?

2 So are we ready to bring in the jury?

3 MS. ARGENTIERI: Yes, Judge, there is just this one  
4 issue --

5 THE COURT: I'm going to give you a -- you e-mailed  
6 me a suggested change, I'm making that. Paula, you should get  
7 hold of that email, for some reason I got a mail router bounce.

8 THE CLERK: Thirty years and you don't remember any  
9 of them.

10 THE COURT: What?

11 THE CLERK: Thirty years and you don't remember --

12 THE COURT: No, I got -- I did remember it but you'll  
13 see for some reason that mail router didn't know who you are.

14 THE CLERK: Maybe they decided it was time to --

15 THE COURT: After thirty years.

16 MS. ARGENTIERI: We -- the defense and the government  
17 agreed on the stipulation that the Court suggested.

18 THE COURT: Okay.

19 MS. ARGENTIERI: We signed it. And after talking  
20 about it with Mr. Ricco, we thought, so the jury doesn't read  
21 too much into it, that maybe you would just enter it, Judge,  
22 and say that --

23 THE COURT: You want it in the charge or you want me  
24 to read it separately?

25 MS. ARGENTIERI: Read it separately before the

1 summation.

2 THE COURT: Okay. I will do that.

3 MS. ARGENTIERI: Okay. Thank you, Judge.

4 THE COURT: Okay. Good luck.

5 MS. ARGENTIERI: Thanks.

6 THE CLERK: Counsel, in case you've been keeping  
7 track of the court's exhibits, Judge Korman's email last night  
8 is Court Exhibit A, his jury instructions is 8-A, his proposed  
9 indictment is 8-B. The redline jury instructions 8-C and the  
10 redline indictment is 8-D.

11 THE COURT: And you've got to get the emails from  
12 last night too.

13 Okay. So what I propose to do is to have the  
14 summations and then we'll break for lunch and then I'll charge  
15 the jury.

16 MS. ARGENTIERI: Sounds good, Judge.

17 THE COURT: Okay.

18 MR. RICCO: That's fine, Judge.

19 THE COURT: Take the estimates of the length of your  
20 summations for the grand assault.

21 MS. ARGENTIERI: Okay. I'm going to take that.

22

23

24

25

1 (Jury enters the courtroom.)

2 THE CLERK: All rise.

3 Please be seated.

4 THE COURT: Ladies and gentlemen, we're about to  
5 begin summations but before we do, I wanted to read to you a  
6 stipulation that both sides have entered into with respect to  
7 something called the "Federal Tort Claims Act."

8 The Federal Tort Claims Act is what gives people the  
9 right who are injured by conduct of government employees the  
10 right to sue the government. And so this is what the  
11 stipulations says.

12 "The Federal Tort Claims Act, sets forth a uniformed  
13 procedure for handling claims against the United States for  
14 money damages only, on account of damage or loss of property or  
15 personal injury or death caused by the negligent or wrongful  
16 omission of a government employee while acting within the scope  
17 of his or her employment. Where in the United States, if a  
18 private person would be libel in accordance with the law where  
19 the place where the act or omission occurred. The claim must  
20 be filed within two years of the date accrued, the stipulation  
21 is admissible in evidence as Government Exhibit 301."

22 Libel, as a private person simply means that, if an  
23 employee of mine caused somebody injury, negligently or  
24 deliberately, I, as the employer would be responsible, and  
25 that's what I've read to you means. So if an employee at the

1 MDC caused -- committed a wrongful act, the United States would  
2 be libel, as just as a private party would be as I've explained  
3 to you.

4 Okay. Who is giving the opening summation?

5 MS. ARGENTIERI: I am, Judge.

6 THE COURT: Okay. The opening summation will be  
7 given by Ms. Argentieri. I wanted to say one thing. The --  
8 tell you something. Summations are arguments, they're not  
9 evidence. This is the evidence. The testimony that you've  
10 heard in court, the exhibits that have been marked into  
11 evidence and any stipulations with which the parties have  
12 entered, all of which is available to you if you want it during  
13 your deliberations.

14 What you're about to hear is arguments, that is the  
15 attorneys' view of what they believe the evidence has shown and  
16 what you should do with that evidence, but itself, is not  
17 evidence. The opening summation will be given by the assistant  
18 United States attorney, then the defendant will have an  
19 opportunity -- the defendant's lawyer will have an opportunity  
20 to give his summation. And then because the government bears  
21 the burden of proof in this case, the government will have an  
22 opportunity to make, I always say a brief rebuttal summation,  
23 but somehow the "brief" gets lost in the translation, so that's  
24 how we're going to proceed.

25 MS. ARGENTIERI: Ready, Judge?



1 THE COURT: Yes.

2 MS. ARGENTIERI: Good morning. At the start of this  
3 case, we told you that it was a case about power and the abuse  
4 of power. And now you know that the defendant abused his power  
5 and position as a federal law enforcement officer, to sexually  
6 abuse Maria. To rape her by force, using fear and while she  
7 was a sentenced prisoner entrusted to his custody and care.

8 Over the past week the government has proven the  
9 defendant's guilt beyond a reasonable doubt on all of the  
10 charges. And this is our time together to review the evidence  
11 that has been presented including the testimony and the  
12 documents, the physical evidence, all of which establishes the  
13 defendant's guilt beyond a reasonable doubt.

14 Now, you know that the defendant started actually  
15 abusing Maria, raping her in December of 2015. And that he  
16 continued to do so repeatedly, using his power and position to  
17 escape detection, until she made, what she knew, was a  
18 monitored phone call and used the defendant's name in an effort  
19 to make him stop. And then after that, the defendant raped her  
20 one final time, in April 2016, just before she was released to  
21 immigration custody.

22 The charges in this case relate to five separate acts  
23 of abuse that occurred on four dates.

24 The first set of charges relate to the defendant's  
25 conduct on December 13, 2015, and two sexual acts are charged

1 on that day; his oral and vaginal penetration of Maria.

2           The second date is charged between December and  
3 February -- December 2015 and February 2016. This is the third  
4 sexual act, but the second date, and it charges the defendant  
5 for vaginally penetrating Maria.

6           The third date, and the fourth sexual act, relates to  
7 an act that occurred on January 2016. You'll remember that  
8 Maria described this as a day Officer D'Anello Smith brought  
9 her down -- actually, I'm sorry, the December 2016, relates to  
10 a date, when just to go back for a second -- relates to a date  
11 December and February 2016, when D'Anello Smith brought her  
12 down to clean and left.

13           This January 2016, relates to a date when Maria went  
14 down with Odie la Cruz to clean and then she hit the defendant  
15 after he grabbed her.

16           And finally, the fifth act, which occurred on the  
17 fourth date, happened in April 2016, when the defendant  
18 vaginally penetrated Maria just before she left for immigration  
19 custody.

20           Now, as we review the evidence together as the Judge  
21 discussed, you're going to see me cite to the trial transcript,  
22 to the exhibits that are in evidence. And that is the evidence  
23 in this case. Not any arguments by anyone, including me. But  
24 you should go through and ask for the evidence, take it in the  
25 back, look at it, test it, you'll see that it proves the

1 defendant's guilt in this case.

2           Now, let's just talk about Maria for a second. She  
3 told you that she came to the United States legally in 2008 to  
4 be with her boyfriend. And she told you when she came here she  
5 worked, at hotels, supermarkets, housekeeping and other jobs.  
6 And then Torres, someone she knew from the Dominican Republic,  
7 contacted her and starting insisting she pick up drugs for him.  
8 And the first time she asked -- he actually demanded her that  
9 she do this, or one of the times, she'd refused. And he held  
10 her accountable for \$300,000 in drugs that were lost because  
11 she didn't go to pick them up.

12           So when you hear a references to this \$300,000 drug  
13 debt that Maria owed, remember that it related to money she  
14 never received, and drugs that she never picked up, and that  
15 the testimony about that debt came from her. So when the  
16 defendant talked about that, remember they want you to believe  
17 her, when it's convenient for them, when they say she's a  
18 criminal. And you know that Maria had to work off that  
19 \$300,000 debt by picking up drugs, which is a crime, that she  
20 was arrested for. And she committed that crime, she pled  
21 guilty and she was sentenced. And that's what brought her into  
22 federal custody. And she was initially housed at the  
23 Metropolitan Correction Center in Manhattan, and then  
24 transferred to the MDC, Brooklyn, where she was serving her  
25 sentence between March 3, 2015 and April 29, 2015. And you

1 know that Maria was housed in Unit 6 South, which is one of the  
2 female units on the sixth floor.

3 Now, like the other inmates, Maria took a job  
4 cleaning. She, along with Odie De La Cruz, cleaned the area on  
5 the 2nd floor that was in the vicinity of the lieutenant's  
6 office. And she told you she cleaned for many different  
7 lieutenants, including the defendant. This is her testimony,  
8 it's in the transcript at 79. And who were some of the  
9 lieutenants she cleaned for? Lt. Rodriguez, Lt. Almos Perez  
10 (ph), but not that often; a black lieutenant, a female, I don't  
11 know her name, and Lt. Martinez and Maldonado. And you know  
12 that the black female lieutenant that Maria was describing was.  
13 She took the stand and testified at that trial. That was the  
14 Lt. Metzger. And Maria also told you that inmates at the MDC  
15 were required to work, this is in her testimony at page 67.  
16 She was asked, "now, as a sentenced prisoner at the MDC, were  
17 you required to work?" And she said "yes." Inmates were  
18 required to work. You've heard that from a number of witnesses,  
19 including Melva Vasquez, at the transcript at page 460 to 461,  
20 she testified, "that if you wanted to switch jobs, it was very  
21 difficult. It was up to the unit team and a lieutenant." And  
22 that when it came down to it, that you wouldn't do it. You  
23 heard that from Danilda Lora. This is the transcript at 548,  
24 "having a job was mandatory once you were sentenced." And  
25 you've also heard about that yesterday from Lt. Metzger.

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1           Now, the lieutenant's office area consisted of a wing  
2 of the prison, including the chaplains office, the lieutenant's  
3 office, the medical area, the legal area and the bathroom. And  
4 you saw photos of that which are in evidence. Government  
5 Exhibit 103-C. This shows a photo of the lieutenant's desk in  
6 the lieutenant's office on the 2nd floor.

7           Now, Government Exhibit 103-E, this shows you the  
8 cabinets where certain medical supplies are kept. And  
9 remember, Maria told you there was locked cabinet to the right  
10 and then a cabinet in the middle, where she could access the  
11 cleaning supplies, and Lt. Metzger also testified about that.  
12 We'll talk about that in a minute.

13           And then finally, Maria also told you, this is  
14 Government Exhibit 103-D, it shows sort of behind the  
15 lieutenant's desk in the office. She told you that the black  
16 female lieutenant, whose name she didn't know, but you know is  
17 Metzger, moved some of the cleaning supplies to the corner  
18 behind his desk. And Maria said the lieutenant was -- didn't  
19 want to use some of the spray stuff because she had bought that  
20 with her own money, and you heard Metzger testify exactly about  
21 that. And actually, you can see from Government Exhibit 208,  
22 so these are the TruIntel records that are in evidence for a  
23 bunch of dates. And you can see on here, that on December 3rd,  
24 she and Odie De La Cruz, were noted, they returned from  
25 cleaning. They had gone down to clean together. It says, even

1 on this record, "returned from cleaning on the 2nd floor." And  
2 just to remind you what Government Exhibit 201-E is, remember  
3 this is the log for the activities that occurred in Unit 6  
4 South. And this only reflects information that officers choose  
5 to enter. So if it's on here an officer entered it, but  
6 sometimes they chose not to. And so you should just to keep  
7 that mind when you're reviewing this. And also remember, that  
8 the most important column in this chart is the event date,  
9 which is sort of in the middle, to the right. To the left is  
10 the date that it is logged but in the middle is the date that  
11 the event happened.

12 Now, Maria told you that Martinez called her to clean  
13 the lieutenant's office at a time when the area was usually  
14 empty and that was on weekends, and this is what Maria said  
15 about that, she said, and this is in the transcript at 82.

16 "Question: Can you describe for the jury what the  
17 2nd floor was like on Fridays after 4 or 5 p.m.?

18 "Answer: Empty. There would just be the person or  
19 the lieutenant and then the person who would take us down. The  
20 other people, the doctors, didn't work after 5 o'clock or on  
21 the weekend.

22 "Question: And just to be clear, on the weekend,  
23 what was the 2nd floor like when you would go clean on weekend?

24 And she said "empty."

25 You also heard about that from multiple other

1 witnesses, including Officer Rodriguez. He testified, in the  
2 transcript at 477 that on Sunday there was no kind of traffic  
3 near the lieutenant's office area.

4 Now, you also know from the exhibits and evidence,  
5 including Government Exhibit 241, that Martinez, that in  
6 December of 2015 and January 2016, Martinez was assigned as  
7 east activities lieutenant, on certain Fridays, Saturdays and  
8 Sundays. So you can see that in Government Exhibit 241, which  
9 is his schedule on a calendar for December, and you can see, by  
10 the way, when we take this fact and when you look at it in  
11 evidence, you can see his shifts are in the column to the  
12 right. So that will tell you what shifts he's working and this  
13 is his schedule for January.

14 Now, Maria also told you, that when she cleaned for  
15 the defendant, with one exception, the officer who escorted her  
16 down would wait. She told you the exception was Officer  
17 D'Anello Smith, whom you heard testify at the trial.

18 This is what Maria said in the transcript at 82:

19 "Question: When you first started to clean for  
20 Martinez, where would the officer escorting take you,  
21 generally?

22 "Answer: He'd go into the lieutenant's office and  
23 he'd say "here they are," and he would go."

24 And whoever the unit officer is, he would leave Maria  
25 alone with the lieutenant.

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1           Now, you also heard from Officer Rodriguez that's how  
2 it worked. When he was a lieutenant, temporarily, he  
3 testified, this is the transcript at 476, he supervised Maria  
4 and the other inmates when they cleaned the lieutenant's office  
5 area. Meaning, he supervised them himself. The unit officer  
6 didn't stay. And then you also heard from D'Anello Smith about  
7 his practice. He told you, when he was assigned as east  
8 internal officer and he was responsible for escorting inmates  
9 to clean, if he did not have an immediate assignment, he would  
10 supervise them himself. He generally stayed unless he had to  
11 go do something else. And that, just for the record, is in his  
12 testimony at 668. And D'Anello Smith also told you what kind  
13 of worker Maria was. He told you she was, and this is the  
14 transcript -- I'm sorry, this is in the transcript at 670, just  
15 for the record what I said it earlier is in the transcript at  
16 668, he testified that Maria did what she was ordered to do.  
17 She did her assignment and there wasn't much talking, much of  
18 anything. She just came down and did what she was assigned to  
19 do.

20           Now, Maria told you that when she first started  
21 cleaning for the defendant, he was nice to her. He was  
22 friendly, that he shared personal information about himself.

23           For example, he told her personal things about  
24 himself, this is the transcript at 88, that he had three  
25 daughters, that his ex worked as a police officer at a clinic



1 and that he lived 10 minutes away from the MDC in apartments  
2 that officers got from that place. He also referred to Maria  
3 by her first name, which she found unusual. That's in the  
4 transcript at 88. Now, you've heard from Officer Rodriguez  
5 that Maria told you about the friend that is in fact true.  
6 That the defendant wife worked security at Lutheran Hospital  
7 and that he lived in Dayton Manor, which was staff housing for  
8 MDC. And you know from Government Exhibit 243-1 in evidence,  
9 which we'll look at in a second as well, that the defendant's  
10 home is not far from the MDC, Brooklyn.

11 Make sure everybody can see it.

12 Now, how did this begin? Maria testified that  
13 Martinez started the abuse with sexual remarks. He began  
14 making sexual comments to her, while she was cleaning the  
15 lieutenant's office, when they were alone. She testified, that  
16 while getting cleaning liquids out of the cabinet in the  
17 lieutenant's office, Martinez asked her, "how do you satisfy  
18 your body?" Like, whether or not I played with myself. She  
19 looked at him and she said, "I beg your pardon?" And he said,  
20 "yeah, I mean, how do you satisfy yourself? I mean, you know,  
21 we're all adults here, don't be embarrassed." And this is in  
22 the transcript at 93. Maria told you that she was embarrassed  
23 and she tried to shut it down. She said, "when I went -- he --  
24 she said Martinez said, that when I went back to the unit, I  
25 should play with myself while thinking of him." This is the

1 transcript at 94. And then she said, "I'm married." And he --  
2 and how did he respond?

3 "Answer: Well, they love you so much that they  
4 haven't even come see you?" And that's in the transcript at  
5 94. And that's chilling. He knew that she'd hadn't had a  
6 visit and that she was very alone. And you know that he had  
7 access to her visitor records.

8 Look at Government Exhibit 227 in evidence.  
9 Remember, these are TruAccess records that Nicole McFarland  
10 testified about yesterday. She told you, you can tell what  
11 kind of access someone has from these records. And so you know  
12 he could have accessed the Bureau Of Prison system that would  
13 show Maria didn't have a visit. She testified that as a  
14 lieutenant, that he would have access to Sentry and other  
15 systems' software, that would have shown he would have access  
16 to the visit records. And then, let's look at Maria's  
17 visitor's records. He was right, as of December 2015, she  
18 hadn't had a visit. And we all know that the entire time she  
19 was there, she only got one visit. And it was after this.  
20 We'll talk about that in a second.

21 Why did, why did the defendant choose Maria?

22 She was isolated. He knew she hadn't had a visit.  
23 He knew that the only access that she had with her family and  
24 people on the outside was through recorded telephone calls.  
25 She was a Spanish speaker, she was a sentenced prisoner, she

1 wasn't getting regular visits from a lawyer or going to court.  
2 She was a prisoner. She was facing deportation. No one would  
3 ever know. Finally, she was afraid.

4           On December 13, 2015, Maria's life changed forever.  
5 She told you it was the worst day of her life. She told you  
6 she thought it was a Saturday or Sunday, that's in the  
7 transcript at 99 to 100, but you know that it was actually  
8 Sunday, December 13th, from the other evidence in this case  
9 which we'll discuss in a second. You know, that that -- the  
10 day that this happened, was the day that Maria's friend Melva,  
11 remember Melva? She testified, Government Exhibit 5, had  
12 received her first visit in six months. You heard that from  
13 Melva, you heard that from Maria, you heard that from Danilda  
14 Lora Osoria, and you know it from the prison record. Let's  
15 just take a look at them for a second. And just so you have  
16 the transcript cites in the record, Melva, that's at transcript  
17 466 and Nani's testimony about that, that's Danilda Osoria is  
18 at 555.

19           Now, this is Government Exhibit 210 in evidence.  
20 These are Melva Vasquez's visitor records. And you can see  
21 from the first six lines which have been pulled out, that  
22 Melva, as of December 2015, hadn't had a visit in six months.  
23 Her visit prior to that was in June.

24           Now, Maria didn't know exactly why Melva had gotten  
25 into trouble. She thought it had something to do with a button

1 missing, but she knew she lost her visits for six months.

2 That's in Maria's testimony at 99.

3           Now, you also heard from Melva Vasquez, that's in the  
4 transcript at 433. She testified, a guard who was surveilling  
5 her visit said she did something sexual and that she -- it was  
6 her word against the guard's word and she was disciplined. And  
7 you know she was taken out of the visiting room is what she  
8 told you, and she was put in what she called a "punishment  
9 room", which we all know was the SHU, and you can tell that  
10 from her visit -- from her housing records, that are in  
11 evidence in Government Exhibit 202.

12           Remember, Nicole McFarland testified about this  
13 yesterday and she said that House Z is a reference to the SHU  
14 and that Maria -- that Melva was in the SHU between May of 2015  
15 and June 3rd -- I'm sorry, just to be specific, May 23, 2015  
16 and June 3, 2015.

17           Now, we also -- Melva testified that it was a  
18 punishment room. We saw photos of the SHU. This is Government  
19 Exhibit 245-C. She described it as small, a bed, a toilet and  
20 none of her stuff.

21           Now, you also saw in Government Exhibit 222, Melva  
22 Vasquez's disciplinary records, which show she lost visiting  
23 privileges for six months for unauthorized contact. And you  
24 can also see on the visit record what -- exactly what Melva  
25 Vasquez described. She said that someone showed up to visit

1 her the first day, that's December 12th, but she did not have a  
2 visit that day. She didn't get a visit until the day, which is  
3 December 13th.

4 And Nicole McFarland told you how that happens.  
5 Sometimes someone would come to visit, they're logged, the  
6 prisoner is never brought down.

7 Now on the next day, the second day, December 13th,  
8 she was able to have a visit. And you know, from Government  
9 Exhibit 241, which was the defendant's schedule, that on  
10 December 13th, which is highlighted here (indicating), marked  
11 -- that he was assigned as the east activities lieutenant.

12 You also know that from Government Exhibit 207 which  
13 is his assignment history, he was assigned day watch 4,  
14 remember, as the east activities lieutenant. And you knew that  
15 actually Martinez was in Unit 6 South earlier that day. And  
16 you know that from -- remember that log we talked about, which  
17 is Government Exhibit 208, if you look under event date it says  
18 December 13, 2015 at 10:10 a.m. he was doing the PREA round in  
19 unit six south.

20 And finally, you know why he picked December 13,  
21 because Odie de la Cruz, who usually cleaned with Maria, also  
22 had a visit.

23 Now, Maria testified she didn't know if Odie were  
24 there or not, she didn't remember, but you know from the  
25 evidence that Odie wasn't there because she had a visit that

1 day, which is also in this True Intel log, Government Exhibit  
2 208, and it shows that Odie de la Cruz had a visit 11:45 a.m.  
3 She went to visiting, you see that, December 13, in the event  
4 date.

5 So finally, he had the opportunity, let's just go  
6 through what Maria said happened that day.

7 "Question: And that day were you taken to clean the  
8 second floor?" This is the transcript at 101.

9 "Answer: Yes.

10 "Question: For who?

11 "Answer: For Lt. Martinez.

12 "Question: Do you recall the time of day you went  
13 down?

14 "Answer: At around 11 or 12.

15 "Question: And how did you get to the second floor?

16 "Answer: An officer took us down and turned us over.  
17 He turned me over to him, he was on duty.

18 This is in the transcript at 102, and I'm also  
19 showing a picture of Government Exhibit 103-C for the record.  
20 She bent down to get the cleaning supplies behind the desk and  
21 the lieutenant's office under the desk area with the printer,  
22 where Lt. Metzger testified that she left the supplies.

23 "Question: What happened next?" This is in the  
24 transcript at 103.

25 "Answer: He turned around and when he turned I

1 looked up at him, and I looked up at him and I said what are  
2 you doing?

3 "Question: What did you see when you looked at him?

4 "Answer: His penis, that it was out.

5 "Question: How was it out?

6 "Answer: Through his -- the fly of his pants.

7 "Question: Was it erect?

8 "Answer: Yes. He was forcing me toward him, I put  
9 my hand here (indicating) on his knees, he was grabbing me so  
10 he could put his penis in my mouth.

11 "Question: What part of you did he grab?

12 "Answer: My head, my head, my shoulder.

13 "Question: Was he able to get his penis in your  
14 mouth?

15 "Answer: Yes.

16 "Question: How did that make you feel?

17 "Answer: Bad, bad. I didn't want to have any  
18 problems. He said you're not going to have any problem.

19 "Question: Did he explain?

20 "Answer: Yes. Because the computer had access to  
21 all of the cameras and you can see on his or her way -- who's  
22 on his or her way, who's getting to the elevator, who's walking  
23 over, who's where. He had access to all of the floors, but he  
24 would pull the second floor all the time now."

25 That's in the transcript at 104. You know that Maria was

1 right, that the computer on the lieutenant's desk accessed all  
2 the cameras in the building including the cameras on the  
3 hallways -- in the hallways on the second floor. You know that  
4 from Special Agent Riley and you knew that from Officer  
5 Rodriguez's testimony that the camera on the lieutenant's desk  
6 could monitor all the cameras in the building including the one  
7 in the hallway outside the lieutenant's office.

8           You also heard from Nicole Pappadio that the  
9 defendant suggested they meet in the lieutenant's office for  
10 sexual activity, because he could monitor who was coming and  
11 going on the second floor using the computer monitor on the  
12 desk.

13           He sent her an e-mail about it. We'll review that in  
14 minute. That testimony was at 698. And you remember the  
15 photos that Special Agent Riley put in, Government Exhibit 103-  
16 F. He could monitor the hallways and the cameras on the other  
17 floors. He could use his position as lieutenant to do this and  
18 get away with it.

19           And then you know what happened after, the defendant  
20 violated Maria again.

21           "Question: What happened after the defendant put his  
22 penis in your mouth?

23           "Answer: After he stood up. He stood me up, put me  
24 on the desk, pulled my pants down until he pulled them down and  
25 he penetrated me." That's in the transcript at 105.



1           Martinez put her face down on the desk and he  
2 vaginally raped her from behind. Maria begged Martinez to use  
3 protection, as she lay there face down crying on the desk. He  
4 did not stop. And she told you that it hurt. That's in the  
5 testimony at 106.

6           "Question: After Lt. Martinez finished did he say  
7 anything to you?

8           "Answer: Yes.

9           "Question: What did he say?

10          "Answer: Oh, you're bleeding.

11          "Question: Did you have your period that day?

12          "Answer: No.

13          "Question: What happened next?

14          "Answer: Well, he said that's what happened, I  
15 turned a girl into a woman."

16               When Maria went into the bathroom to wipe herself off  
17 she noticed his semen and drops of blood in the toilet bowl.  
18 That's in her testimony at 111. You know she was bleeding  
19 because you heard about that from Kiara Maldonado Government  
20 Exhibit 6, from Danilda Lora Osoria, Government Exhibit 4 and  
21 from Melva Vasquez, Government Exhibit 5. They told you about  
22 it. We'll get to that in a second.

23               Back in the lieutenant's office, Maria asked him  
24 where his semen was, Martinez said he came inside of me.

25          "Question: What was your reaction?

1 "Answer: I said what; how could you come inside of  
2 me? And I asked him to get me a pill.

3 "Question: What kind of pill?

4 "Answer: The morning after pill."

5 What is the morning after pill? When a man and a  
6 woman have sexual relations and the man comes inside the woman  
7 can take a pill the next day so she won't have a trial -- a  
8 child. And this is her testimony cited from 109.

9 You also heard that -- about that from Kiara  
10 Maldonado. Martinez told Maria he was going to bring her the  
11 Plan B, in Spanish she said it, she La Tostia (in Spanish).  
12 And that's in the transcript at page -- at 643.

13 Now, Martinez assured Maria that she could not get  
14 pregnant. She told you I was asking for the pill, I was  
15 crying, I was begging him. I didn't even want to imagine being  
16 pregnant in that place and much like -- and much less like  
17 that. He said no, I wasn't going to have any problems because  
18 he had surgery, so I wasn't going to get pregnant. And then  
19 she explained that what he was explaining to her she understood  
20 as an operation that makes it so a man cannot have anymore  
21 children unless he gets operated on again.

22 And you know that's true. You saw that again through  
23 medical records, Government Exhibit 215 in evidence. We've  
24 heard also from Dr. Vanick, the defendant had a vasectomy back  
25 in August of 2013. And you know from the doctor's testimony

1 that even a man with a vasectomy can still ejaculate, can still  
2 have normal sexual function. Their -- his erections would be  
3 unchanged and his semen would be unchanged except for the fact  
4 that there's no sperm in it.

5 Maria wouldn't calm down and finally the defendant  
6 agreed. Hard for him not to. Hard for him not to. She can't  
7 get it together in the immediate aftermath of this, the jig is  
8 up for him. He was refusing to get it until he saw how  
9 desperate I was and then he said okay. And so he felt it was  
10 what he had to do.

11 And how do you know that? You saw Government Exhibit  
12 214 in evidence, the records from the Rite Aid the defendant  
13 goes to. And you'll see that on December 13, 2015 at 9:29 p.m.  
14 he uses his customer discount to purchase the Plan B pill.  
15 You'll see the name and address in the visitor record, he even  
16 used his discount card. You'll see his telephone number, we'll  
17 come back to that in a minute. You also saw Government Exhibit  
18 218 in evidence, which showed that the defendant used his USA  
19 debit card to make that purchase at the Rite Aid on Fort  
20 Hamilton Parkway, which you know from Government Exhibit 243 is  
21 quite convenient for him on his way over to work or on his way  
22 back to work. And you know that that is his Rite Aid, that's  
23 where he goes because there are other purchases on there.

24 Now, Maria returned to the unit she was upset,  
25 bleeding and ashamed. She told you she called out for Kiara,

1 she said meet -- she told her to meet her in the bathroom  
2 stalls. I said come look. No, no, no, don't come in the same  
3 stall, because he's probably watching us on the camera. She  
4 thought -- she immediately worried about that. He's watching  
5 us on the camera, he's going to know. Kiara went into the next  
6 stall and Maria told her that she was still bleeding.

7           And you know -- Government Exhibit 104-D, these are  
8 the stalls they went into. And you know that despite any  
9 suggestion to the contrary by the defendant in this trial  
10 because Lieutenant Metzger told you herself that there are  
11 cameras in this unit that tape the outside of those bathroom  
12 stalls. Not the inside the outside. So that if he were  
13 watching from the second floor he could have seen what she was  
14 doing if she's was going in with someone.

15           Maria's testimony is also corroborated by Kiara  
16 Maldonado's testimony. What did Kiara say, she testified she  
17 came in, Maria, she called me and told me to come with her to  
18 the bathroom, like inside the stall. She asked me to come  
19 inside the stall with her I was like, no, no, no. She told me  
20 to go into the other stall. She wanted to show she had blood  
21 on her panties. Kiara said I don't want to see that. Then she  
22 freaked out and said he's probably watching through the  
23 cameras. And that's in the transcript at page 32 and page 33.

24           Now, Kiara also told you she was surprised when Maria  
25 -- because Maria was usually very private. That she changed in

1 the bathroom, which is also what Maria told you in the  
2 transcript at 67. She said -- she was asked:

3 "Question: And where do you go to change clothes?

4 "Answer: In the bathroom.

5 "Question: Why?

6 "Answer: Well, I don't like to be seen, you know, if  
7 you change clothes outside everybody could see you."

8 And you know that when she was there with Kiara she  
9 told her that Martinez had penetrated her. And you know that  
10 later, Maria met with her friends on Nani's bed and told them  
11 some of what happened to her. And you remember they testified  
12 that they met on Nani's, Danilda Osoria's bed because she had a  
13 bottom bunk. You saw that in the government exhibit that  
14 showed that. They met there, Maria told them that Martinez had  
15 penetrated her and she had bled. And what did they do? Nani  
16 and Kiara didn't take it seriously. She was alone.

17 She went to her bed and then later came back. And  
18 when they saw how upset she started to take it more seriously.  
19 And finally, she went to the bathroom, she was still bleeding  
20 and she called for Nani to bring her a sanitary napkin. Nani  
21 also told you that. The transcript at 553, Maria called out to  
22 her from the bathroom because she was bleeding, not from her  
23 period and she needed a kotex page. That's just what Maria  
24 told you.

25 She was worried and ashamed and afraid for herself

1 that she would get pregnant. And Nani also told you about  
2 that. She said Maria was nervous, she was anxious, she wanted  
3 to talk to us. She had something she wanted to get out. There  
4 was something in her she wanted to get out. This is the  
5 transcript at 559.

6 She said Martinez had stuck it in her. She was  
7 scared she would get pregnant. She was in shock. She never  
8 thought something like that could have happened to her where  
9 she was. His penis had been in her mouth. That's in the  
10 transcript at 559 and 60 and 562.

11 Nani told you that she spoke with -- that Maria spoke  
12 with Kiara and Nani and Melva on Nani's bed then she went back  
13 to her own bed and that Nani didn't take it seriously. And  
14 Nani was asked how did Maria react to you not thinking it was a  
15 big deal? What Nani said was she was really upset. She said,  
16 Nani, what's the matter with you don't you have feelings? But  
17 that's the kind of person I was, I was doing my time. You feel  
18 very alone in that kind of place. She was looking to me for  
19 support and I didn't know how to give her that. The transcript  
20 at 551.

21 You also heard about these conversations from Kiara  
22 Maldonado. This is in the transcript at 636. They later met  
23 up again on Nani's bed, Maria started crying a lot. She said  
24 she gave him oral sex he grabbed her and he penetrated her.  
25 And what did she say about her reaction I thought it was funny

1 at first, but then she started like telling a story, she  
2 started like crying and stuff, so I felt bad after.

3 Now, you saw Kiara Maldonado testify she was just as  
4 Maria described her, a little girl, Le manior. She did not  
5 understand what Maria was telling her at first.

6 Melva Vasquez also told you what happened when she  
7 returned from the visit. Maria was crying, she looked like she  
8 had been crying for a while. Maria said she had sex with that  
9 man, she had bled. He hadn't used protection. She said it  
10 happened in the man's office and he had a camera so he could  
11 check to see if anyone was coming.

12 She also told you that Nani and Kiara weren't taking  
13 it seriously but that she did. That's in transcript 447 to  
14 449.

15 Now, you know that later that night the defendant did  
16 exactly what he said he was going to do, and he brought Maria  
17 the Plan B pill. Now, Maria told you that he returned to the  
18 unit at around 12:30 a.m. He called her over, handed her a  
19 paper identification inside a plastic cover and the pill was  
20 inside. At the time that happened Nani was already in the  
21 kitchen.

22 Kiara told you she saw it. She was nosey she said,  
23 she was watching. She saw him come in, she saw him walk in  
24 call Maria beyond the line and hand her something that looked  
25 like a plastic case and she saw Maria walk towards the sink.

1 That's in the transcript at 639.

2           Nani told you that when she came back from -- before  
3 she left for work Maria told her that Martinez was going to  
4 bring her the morning after pill. And that when she returned  
5 from work Maria showed her the package and asked her to read it  
6 to her. She told you it was small. I believe she held up  
7 three fingers. The transcript at 564 to 565. And when Melva  
8 returned from working Maria showed her the package the pill  
9 came in. Melva told Maria to get rid of it and Maria threw the  
10 packet in the toilet. And that's in the transcript at 450 to  
11 451.

12           And you know the defendant was in the unit in the  
13 early morning hours after December 13, in the early morning  
14 hours of December 14. How do you know that? Because he logged  
15 it in his PREA round. You could see it in the records,  
16 Government Exhibit 208. This is our log again. Look at the  
17 event date 12/14, 12:19 a.m. Lt. Martinez is in unit six south  
18 bringing Maria the morning after pill.

19           And I also want to explain to you this exhibit. This  
20 is Government Exhibit 242-1 in evidence. And what this is, is  
21 it summarizes information for certain records that the  
22 Government has put in evidence. Hold on, I'm going to try to  
23 do this without dropping it. Okay. So if you walk through  
24 this it tells you where -- where the information comes from.  
25 And there are a smaller versions of this in evidence. So this



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1 tells you that at Sunday 13th at 8 a.m. the defendant started  
2 his shift. That's in Government Exhibit 207. That at 10:10  
3 a.m. he was in unit six south. That's from Government Exhibit  
4 228 -- 208. Then three visitors arrived to see Danilda Lora  
5 Osoria. That's from her visitor records.

6 Then after that at 11:42, 11:45 two visitors arrive to see  
7 Odie de la Cruz, that's in Government Exhibit 235. 11:45  
8 Danilda Osoria and Odie de la Cruz go to the visiting room,  
9 Government Exhibit 208. 1:38 Odie de la Cruz returned to unit  
10 six south from her visit. That's again in the log. At 2:00  
11 Melva's visitor comes, Government Exhibit 210. And then 3:15  
12 you can see in this log that these women are returned to the  
13 unit and at 4:00 the shift -- the defendant's shift ends. Then  
14 at 9:29 he purchases the Plan B pill at Rite Aid. 12:00 that  
15 night he begins his shift, his 12 to 8 shift and at 12:19 he is  
16 in the unit conducting his PREA round.

17 Now, why didn't Maria report Martinez, why didn't she  
18 tell anyone. You heard it from -- you heard a reason from  
19 Kiara Maldonado. Maria asked Kiara not to tell anyone because  
20 Martinez said he would take her to SHU or give her more time.  
21 That's the transcript at 640.

22 Maria told you in her own words why she did not tell  
23 any prison officials what happened. No, because I know --  
24 because no, I didn't want to have any problems. I didn't know  
25 enough English to be able to explain. I didn't have anybody

1 here. No matter what -- and no matter what the circumstances  
2 are I'm a criminal. He's a man -- he's a man who has a certain  
3 position who's going to believe a criminal compared to a person  
4 who has a position, who has his life, no. That's in the  
5 transcript at 138.

6           You know she was frustrated, she was hurt and she was  
7 trying to be -- be realistic about the world and what her  
8 position meant for her. But you know that that is not how this  
9 country works, that no one even a federal law enforcement  
10 officer is above the law. And that even a criminal, isn't that  
11 what defense counsel keeps calling Maria and her friends  
12 criminals, drug dealers.

13           We know that in this country even people who have  
14 made bad choices, who have made wrong choices, who have pled  
15 guilty they're protected by the constitution and its laws.

16           And that when Judge Swain sentenced Maria, she did  
17 not sentence her to five months of rape and sexual abuse at the  
18 hands of this defendant.

19           Now, for the defendant's conduct on December 13, he  
20 faces charges related to two different sexual acts. Let's just  
21 talk about that for second. One set of charges relates to the  
22 defendant's contact between the defendant's penis and Maria's  
23 mouth.

24           The other charges relate to his penetration of her  
25 vagina with his penis. So for the contact between his penis

1 and her mouth on December 13, 2015, the first time that this  
2 happened he's charged with four counts. Deprivation of Maria's  
3 civil rights, aggravated sexual abuse, sexual abuse and sexual  
4 abuse of a ward.

5 For the sexual act that occurred on that day, his  
6 penetration of her vagina with his penis he faces four counts.  
7 And they're four counts -- the same four counts. Deprivation  
8 of her civil rights, aggravated sexual abuse, sexual abuse and  
9 sexual abuse of a ward.

10 Now, I'm just going to go through a little bit about  
11 the law, and I'm going to start with aggravated sexual abuse.  
12 And this is the thing I want to say to you about the law.  
13 There's only one judge in this courtroom and it's Judge Korman  
14 and what he tells you always controls. But I'm going to tell  
15 you what I think he's going to say, but if at any point what I  
16 say is different from what he says it's always what the Judge -  
17 - what the Judge says.

18 So let me just tell you a little bit of what I think  
19 he's going to say about what we have to prove. First, that the  
20 defendant caused the victim to engage in a sexual act. And as  
21 to the first element a sexual act means contact between the  
22 mouth and penis, however slight, contact between the penis and  
23 the vulva, which you know from Dr. Vapnick's testimony is the  
24 outer vaginal opening. So it's the sexual contact.

25 And as to the second element, that the defendant

1 acted knowingly, we basically have to show to act knowingly is  
2 to be aware that your conduct is reasonably certain -- that  
3 from your conduct there's a result that's reasonably certain to  
4 result. And that you're not -- and not because of ignorance,  
5 mistake or carelessness. And knowledge may be proven by the  
6 defendant's conduct and all of the surrounding facts as  
7 represented.

8 Now, as to the third element that the defendant  
9 caused the sexual act using force against the victim. Use of  
10 force means use of such physical force that's sufficient to  
11 overcome and restraining or injure a person. But the  
12 government isn't required to show that the victim resisted.

13 And as to the fourth element the offense was  
14 committed in federal prison. I think you'll be instructed that  
15 the MDC is a federal prison. You heard testimony about that.  
16 So if you find the offense occurred at the MDC this element  
17 will be satisfied.

18 Now, let's just go through the evidence. The  
19 evidence is established beyond a reasonable doubt that the  
20 defendant is guilty of counts and two and six. Those counts  
21 charge him with aggravated sexual abuse. Count two for the  
22 sexual act between his penis and Maria's mouth. Count six for  
23 the sexual act between his penis and her vulva. And you know  
24 that that's -- those are the sexual acts that are described in  
25 count two and six.

1           Then for his actions in forcing his penis into  
2 Maria's mouth and penetrating her vagina with his penis he  
3 caused the victim to engage in sexual acts. You know that the  
4 first element of these two crimes is established.

5           As to the second element you know that the defendant  
6 acted knowingly. That it's not by accident or mistake. He  
7 acted intentionally. You know that from Maria's testimony.

8           Third, I'm going to go to the last element here, you  
9 know the offense was committed in a federal prison. There's  
10 little dispute if this has occurred it happened in the MDC,  
11 which is a federal prison.

12           You also know that he's used force against a victim.  
13 Let's look at Maria's testimony on that. She -- she was asked:

14           "Question: How did she feel while all this was going  
15 on?

16           "Answer: It's the worst thing that ever happened to  
17 me, he killed me inside.

18           "Question: Did you want to have Lt. Martinez's penis  
19 in your mouth that day?

20           "Answer: No.

21           "Question: Did you want to have sex with him that  
22 day?

23           "Answer: No."

24           Maria's testimony is that he grabbed her, her head,  
25 he used force to push it down on his penis and his penis was in

1 her mouth. And then he picked her up pressed her forward  
2 against the desk and grabbed her penetrating her all while she  
3 was bent face down on the desk.

4 She -- she was asked: did he force you to do those  
5 things? Yes. Do you feel like you had any choice? No. And  
6 you know that Maria -- Martinez was bigger than Maria and  
7 stronger than Maria. You know that all of this evidence  
8 establishes the last element that he used force against Maria  
9 and that the Government has established beyond a reasonable  
10 doubt that the defendant is guilty of counts two and six  
11 related to the defendant's conduct on December 13, 2015.

12 Now, I'm going to move on to counts one and five,  
13 which charged the defendant with civil rights violations on  
14 December 13, 2015.

15 Now, as to the first element that on the specified  
16 date the defendant acted under a color of law. That means that  
17 acted pursuant to or was clothed with the authority to act  
18 under federal law. So if the defendant misuses the power  
19 vested in him by the law to deprive someone of his right, his  
20 misconduct is under the color of law even if the law forbids  
21 what he did.

22 An element can be satisfied by the fact that an  
23 official gained access to the victim in the course of his  
24 official duty, which is what happened here. We'll get to that  
25 in a second.

1           Now, as to the second element the Government has to  
2 prove that the defendant deprived the victim of her right to be  
3 free from cruel and unusual punishment, which is included --  
4 and the right covered by -- by Section 242 include those  
5 protected in the Constitution. Here it's the right to be free  
6 from cruel and unusual punishment, which is secured to Maria by  
7 the Eighth Amendment of the constitution. And that right  
8 exists for individuals who are serving prison time after being  
9 convicted of a crime.

10           Now, as to the third element, you have to find that  
11 the defendant acted willfully. So you can find he acted  
12 willfully if he acted in open defiance or reckless regard --  
13 regard -- with reckless disregard of his federal constitutional  
14 rights, which here I just described is the right to be free  
15 from cruel and unusual punishment.

16           Now, as the Judge will instruct you that doesn't mean  
17 that the Government must show the defendant acted with  
18 knowledge of the particular provisions of the constitution or  
19 that he would think in those terms. His specific intent of it  
20 needs to be expressed. You can reasonably infer from the  
21 surrounding circumstances of the act and you can look to his  
22 words, his experience, his knowledge and what resulted.

23           As to the fourth element, the defendant's conduct  
24 resulted in aggravated sexual abuse of Maria, which were the  
25 four elements we just went through in the prior crime.

1           Now, the evidence has established beyond a reasonable  
2 doubt that the defendant is guilty of counts one and five for  
3 his conduct on December 13, 2015. And remember that count one,  
4 even though the conduct occurred on the same day it's two  
5 different acts. It's him forcing his penis into his mouth --  
6 forcing his penis into her mouth for count one. And for count  
7 five it's for him putting his penis in her vagina.

8           Now, he acted under color of law. You know that by  
9 virtue of his position as lieutenant he had access to Maria on  
10 December 13, 2015. So you can find the first element  
11 established.

12           Second, by willfully forcing his penis into Maria's  
13 mouth and forcing his penis into her vagina he deprived her of  
14 her right to be free from cruel and unusual punishment.

15           Third, you know that he acted willfully. That is his  
16 actions were not the result of some mistake, and that he acted  
17 with a bad intent. And you know that from the evidence that we  
18 reviewed, that's what Maria said happened that day.

19           And finally, you know that defendant's conduct  
20 constituted aggravated sexual abuse, which is the crime you  
21 reviewed just before that. So if you find counts two and six  
22 established you can also find this element established, that  
23 the defendant used -- knowingly used physical force against  
24 Maria while in a federal prison to cause Maria to engage in  
25 sexual acts.



1           Now, counts three and seven charged the defendant  
2 with sexual abuse in a federal prison for his conduct on  
3 December 13, 2015. As to the first, second and fourth element,  
4 we've talked about that and I'm going to go over it again, but  
5 what is different and makes this crime a different crime than  
6 the others is the third element that the defendant caused the  
7 victim to engage in a sexual act by threatening the victim or  
8 placing the victim in fear. So aggravated sexual abuse  
9 requires force. That's the first crime we went over. But this  
10 type of sexual abuse requires proof of threat to the victim or  
11 instilling fear in the victim. And the fear must not be fear  
12 of death, serious bodily injury or kidnaping. Those fears  
13 don't apply. The fear must be a form other than being afraid,  
14 and we'll talk about that in a second.

15           The defendant has establish -- the defendant, the  
16 Government has established the defendant's guilt of sexual  
17 abuse in counts three and seven beyond a reasonable doubt.  
18 Let's review it.

19           First, and we went over it, the Government has  
20 established the defendant caused the victim to engage in sexual  
21 acts. The two sexual acts that are charged on this day, that  
22 he acted knowingly and that the offense was committed in a  
23 federal prison.

24           With regard to the last element threatening the  
25 victim or placing her in fear. Let's take a look at Maria's

1 testimony.

2 "Question: Now, after the rape did the defendant say  
3 anything to you about -- about talking about what happened?"

4 This is in the transcript at 111 and 112.

5 "Answer: What he said was not tell anybody.

6 "Question: What did he say to you about that?

7 "Answer: To not tell anybody about it. And he said,  
8 you know, like I could have a problem, they would take my time  
9 away.

10 "Question: And what did you understand him to mean?

11 "Answer: That I would end up having to do more time  
12 in jail and that I could end up having to go the SHU. That if  
13 anyone found out about it I could go to the SHU."

14 You know that the Government has established that he  
15 threatened the victim and he placed her in fear. Fear of being  
16 held in a SHU, fear of getting more prison time, fear of  
17 getting into trouble. And you heard about the threats that the  
18 defendant made also from Kiara Maldonado, and I reviewed that  
19 earlier. Therefore, the Government has established the  
20 defendant's guilt beyond a reasonable doubt of this element and  
21 counts three and seven. Okay?

22 Now, finally, counts four and eight charge the defendant  
23 with sexual abuse of a ward for his conduct on December 13,  
24 2015. We just reviewed the first elements. That the defendant  
25 caused the victim to engage in a sexual act. That he acted

1 knowingly.

2           Let's talk for a second about official detention. I  
3 expect the Judge will instruct you that official detention by a  
4 federal officer or an employ -- it means that the person in the  
5 detention following a charge or a conviction of an offense.  
6 And we'll talk about that in a second but you know that Maria  
7 was serving her time as a convicted prisoner.

8           As to the fourth element, the victim was under the  
9 custodial, supervisory or disciplinary authority of the  
10 defendant. Now the judge is going to instruct you, I expect  
11 he'll say that custody is defined as immediate charge and  
12 control exercised by a person or authority and that the Bureau  
13 of Prisons execute -- exercises custodial authority over  
14 inmates in its prison.

15           Now supervisory authority consists of the authority  
16 to oversee other persons, to ensure they comply with the rules  
17 and regulations. Now disciplinary authority is commonly  
18 understood as the authority to punish or correct breaches of  
19 the rules and regulations of an agency.

20           Now although we have presented evidence of all three  
21 of these types of authority, you need only find one but you  
22 have to be unanimous and in agreement about the type of  
23 authority you find.

24           So the evidence has established, that the defendant  
25 is guilty of Counts 4 and 8 for his conduct on December 13th,

1 2015. First, he caused the victim to engage in a sexual act  
2 and you know that sexual acts are different on that day for  
3 Counts 4 and 8.

4 Second, that he acted knowingly. That the victim was  
5 in official detention. You know that Maria was sentenced  
6 federal prisoner and you know that she was under the custodial  
7 supervisory and disciplinary authority of the defendant.

8 Let's just talk about that for a second. Maria told  
9 you that the captain was above the lieutenants, who were above  
10 everybody else and that's in the transcript at 329 to 330. And  
11 Rodriguez told you, as the east activities lieutenant, he was  
12 responsible for the east building, for making sure all officers  
13 were at their post, that everything was safe and that all  
14 inmates were dressed and fed and okay. And that's in the  
15 transcript at 515. So multiple witnesses will testify that  
16 inmates at the MDC are overseen by corrections officers and  
17 lieutenants.

18 And you know that the acts occurred on December 13th,  
19 while the defendant was supervising Maria while she was  
20 cleaning. The government has established this last element and  
21 the defendant's guilt beyond a reasonable doubt of Counts 4 and  
22 8.

23 Now the defendant is also charged with raping Maria  
24 on a specific occasion between December 15th -- December 2015  
25 and February 2016. She did not have a specific date she knew

1 it happened but she described it as the time that Officer  
2 D'Anello Smith brought her to clean for Martinez and he left  
3 her on an errand for Martinez.

4 This is what she said about it. Martinez had brought  
5 her down to clean by D'Anello Smith, which happened no more  
6 than three times. That's the transcript at 140, that it was on  
7 a Friday, Saturday or Sunday. That she started to clean the  
8 bathroom -- this is the transcript at 142 -- after D'Anello  
9 Smith left and then she knows that this happened sometime after  
10 the first time she was raped, and sometime before the Facebook  
11 phone call, which other evidence establishes was February 7th,  
12 2016. And she told that while D'Anello Smith was gone,  
13 Martinez raped her.

14 She told you she overheard something about Smith  
15 having to go somewhere and then the defendant said, he didn't  
16 have a lot of time because he had sent Smith to the west side,  
17 to some other place in the west side. He said to me, "It's a  
18 long hallway, so walk. It's going to take him ten minutes to  
19 get there and ten minutes to get back. I have about 20  
20 minutes."

21 And when Lieutenant. Martinez came to the doorway of  
22 the bathroom where she had started to clean and said this to  
23 you, what was his tone? Like, come on, walk, I only have 20  
24 minutes. I sent Smith, you know? And he was mad because  
25 you'll remember that he had been calling out to her from the

1 lieutenant's office for a while and she didn't come when she  
2 was called. That's in the transcript at 144 to 45.

3           You also heard Officer Smith testify at this trial  
4 and he told you that he recalled bringing two inmates down to  
5 clean. He didn't know their names but he identified the photos  
6 of Odie de la Cruz and Maria. And he escorted Maria to clean  
7 for Martinez approximately three or four times. And that while  
8 it was his practice to stay while inmates were cleaning when he  
9 was east internal officer, he was also responsible for carrying  
10 out tasks that were assigned by the east activities lieutenant.

11           This is his testimony at 672: And sometimes those  
12 tasks required him to go to the west building.

13           Now Officer Smith testified about how he got there.  
14 There are approximately six doors that you must cross from the  
15 east building to the west building or from west to east. They  
16 are metal. They're operated by the control center who has to,  
17 upon recognizing you, grant you access, and it can take some  
18 time depending on what's happening.

19           You also heard about that through Lieutenant Metzger,  
20 who testified it could take a while. I think she said up to 20  
21 minutes.

22           Now Maria testified what happened after Smith left.  
23 After she followed him out of the bathroom, she held up a mop  
24 that she was holding as if she was going to hit him but she  
25 didn't.

1 "Question: Why didn't you hit him?

2 "Answer: What I would say to myself all the time was  
3 if I hit him, I would have to hit him so he doesn't get up  
4 again and I didn't hit him because my entire family was in the  
5 D.R. and I would say to myself, they will never know why I am  
6 going to have to spend the rest of my life, as they say, in  
7 jail." This is the transcript at 146.

8 "Question: What did you think would happen if you  
9 hit him with a mop?

10 "Answer: Well, I would be hitting a lieutenant in a  
11 prison. I would have gotten time. I would have gotten a lot  
12 of time." And that's in the transcript at 146.

13 You know why she didn't hit him. It would have been  
14 her word against his and she would have done more time in jail.  
15 She put the mop down outside the lieutenant's door and she told  
16 you what happened next inside the lieutenant's office.

17 "Answer: He grabbed the computer screen. He turned  
18 it around, so it was facing the corner. The monitor showed the  
19 second floor. Each square showed a different part of the  
20 second floor. He grabbed me. He started to grope me. He put  
21 his hand in my vagina. He would unbutton me. I would button  
22 myself back up. He would unbutton me. Everything I had  
23 buttoned back up until he continued to grope me until he was  
24 able to pull my pants down and penetrate me again.

25 "Question: And what part of your body did he

1 penetrate?

2 "Answer: My vagina.

3 "Question: And what did he penetrate it with?

4 "Answer: His penis.

5 "Question: How did you feel while this was going on?

6 "Answer: Powerless, miserable. I would rather have

7 been killed." And that's in the transcript at 148 to 149.

8 Now Maria didn't know which day this was and it's  
9 charged as I said again, between December 2015, and February  
10 2016 but from the documents and evidence in this case, you know  
11 that it has to be one of these three dates; January 16th, 2016,  
12 January 30th, 2016 or February 6th, 2016. These are the dates  
13 after the date of the first rape, which we know is December  
14 13th and before the Facebook call which we know is on February  
15 7th, 2016, when Officer D'Anello Smith was assigned as the east  
16 activities internal officer and Lieutenant Carlos Martinez was  
17 assigned as the east activities lieutenant on the same shift.

18 You heard about it from Special Agent Riley who  
19 confirmed it through the time and attendance records. This is  
20 Government Exhibit 207, Lieutenant Martinez's daily assignment.  
21 It shows he watched day watch 4 -- he worked day watch 4 on  
22 January 16th, January 30th and February 6th, 2016. This is  
23 Government's Exhibit 225, Smith's assignments that show that he  
24 watched day watch 4 as east internal officer, January 16th,  
25 January 30th and February 6th, 2016.



1           For his conduct on the day in between December 15th  
2 -- December 2015 and February 2016, he's charged with four  
3 counts; deprivation of Maria's civil rights, aggravated sexual  
4 abuse, sexual abuse and sexual abuse of a ward. Those are four  
5 different times that relate to misconduct on that day which is  
6 again, the day D'Anello Smith brought her to clean and left.  
7 That's how she remembers it.

8           Maria's testimony about what happened that day, you  
9 remember I just said it, "I would rather have been killed."

10           "Question: Did you want to have his penis in your  
11 vagina?

12           "Answer: No.

13           "Question: Did you feel like you had a choice?

14           "Answer: No.

15           "Question: Did he force you?

16           "Answer: Yes." That's in the transcript at 149.

17           We'll start with aggravated sexual abuse which is  
18 Count 10, which is the third line down on this chart. You know  
19 that the evidence has established the defendant is guilty of  
20 Count 10 as to the first element, the defendant caused Maria to  
21 engage in a sexual act on that day. That is, he caused contact  
22 between his penis and Maria's vulva -- vaginal opening.

23           You know from Maria's testimony that the defendant  
24 acted knowingly and that he used physical force. She told you  
25 he grabbed her, he groped her, he forced her pants down and

1 used physical force. She described -- and this was in the  
2 transcript at 148:

3 "Answer: He pushed me so my body would be on this  
4 part of the desk." And she described her chest being on the  
5 desk and he continued to grope her until he could pull his  
6 pants down and penetrate her.

7 Finally, you know this offense was committed in a  
8 federal prison. The government has established the defendant  
9 is guilty of Count 10.

10 For his conduct on that day, the defendant is also  
11 charged with violating Maria's civil rights. As to the first  
12 element on this date when D'Anello Smith brought her to clean  
13 and left, he was acting in his capacity as a lieutenant at the  
14 MDC. That's how he had access to her at all. That's why he  
15 was in a position to send D'Anello Smith away and stay with her  
16 in the office.

17 Second, by forcibly penetrating Maria as we just went  
18 over, he deprived of her rights to be free of cruel and unusual  
19 punishment.

20 As to the third element, you can find the defendant  
21 acted willfully. The evidence shows, you can infer that from  
22 his deliberate actions in sending Smith away, yelling for  
23 Maria, bringing her into the office and penetrating her.

24 Fourth, you know the defendant's conduct constituted  
25 aggravated sexual abuse, because we just reviewed that.

1           The defendant is also charged with sexual abuse in a  
2 federal prison for his conduct on this day. First, as we just  
3 reviewed, he forced Maria to engage in a sexual act. He acted  
4 knowingly and you know that he threatened her and placed her in  
5 fear, which is why Maria didn't go into the lieutenant's  
6 office. She didn't come when he called. That's why she didn't  
7 hit him with the mop. She was afraid of being raped again.  
8 And she as afraid of the consequences if she defended herself.

9           Lastly, you know, that this offense was committed in  
10 a federal prison. The government has established the  
11 defendant's guilt on Count 11.

12           Count 12 charges the defendant for the same act with  
13 sexual abuse of a ward. First, you know the defendant on this  
14 day when D'Anello Smith left, caused the victim to engage in a  
15 sexual act. You know from what we just discussed, the  
16 defendant acted knowingly. You know that Maria was in official  
17 detention because nothing had changed. She was still serving  
18 her time as a sentenced prisoner within the MDC. And finally,  
19 you know that she was being supervised by Lieutenant. Martinez  
20 at the time that this happened, which means that she was under  
21 his authority.

22           Now you also know that these are not the only times  
23 when Martinez raped Maria. She told you.

24           "Question: Between the first time Lieutenant  
25 Martinez raped you and the incident where he sent Officer Smith

1 away, so between December 13th and this other incident we've  
2 been talking about, did he rape you between those two  
3 incidents?

4 "Answer: Yes.

5 "Question: And did he rape you again after the  
6 incident where he sent Officer Smith away?

7 "Answer: Yes.

8 "Question: Now you testified yesterday you couldn't  
9 recall exactly how many times Lieutenant Martinez raped you, is  
10 that correct?

11 "Answer: Yes."

12 And that's in the transcript at 151.

13 "Question: Was it more than five times?

14 "Answer: Yes.

15 "Question: Was it at least ten times?

16 "Answer: Yes, at least. Sorry, at least.

17 "Question: And what days of this week would this  
18 happen on?

19 "Answer: Friday, Saturday and Sunday.

20 "Question: And each time he raped you, what room did  
21 it happen in?

22 "Answer: The lieutenant's office."

23 That's the transcript at 152.

24 "Question: And each time it happened, was anyone  
25 else in the office with you and Lieutenant Martinez?

1 "Answer: No.

2 "Question: And each time he raped you, what part of  
3 your body did he penetrate?

4 "Answer: My vagina.

5 "Question: And each time he raped you, what did he  
6 penetrate your vagina with?

7 "Answer: With his penis.

8 "Question: How would he expose his penis to you?

9 "Answer: Through his zipper because he never took  
10 off his pants.

11 "Question: What, if anything, did he have on his --  
12 the belt of his pants?

13 "Answer: All of his keys.

14 "Question: Did the keys make a sound when he raped  
15 you?

16 "Answer: Yes."

17 That's the transcript at 152 to 153. And you know  
18 from Officer Smith that lieutenants carry a very large set of  
19 keys on their duty belt and that's the transcript at 274.

20 Maria testified, apart from the -- now she was asked:

21 "Question: Now apart from the last time he raped  
22 you, which we'll get to later, what position were you in when  
23 Lieutenant Martinez raped you?

24 "Answer: I was either on the desk or I was on the  
25 desk with my chest pressed on the desk or on this side of the

1 desk. He always had to keep his eye on the computer."

2           The transcript at 153. You heard about that computer  
3 from another witness. You heard from Nicole Pappadio who works  
4 at the MDC in 2015 and had a relationship with Martinez, that  
5 Martinez suggested they need to have sex inside the  
6 lieutenant's office in the MDC because he could watch on the  
7 cameras to see who was coming and going on the floor, using the  
8 monitor on the lieutenant's office desk. And you know that  
9 they met for the purpose of having sexual contact in the  
10 lieutenant's office. And that's in the transcript at 698 to  
11 700.

12           And you saw an email the defendant wrote to Pappadio  
13 where he said that. This is an email. It's in evidence as  
14 Government's Exhibit 2 -- I can't read that, I think it's 216.  
15 What did he say to Nicole? "I was going to have you come this  
16 morning here but the video system on the computer is down."  
17 That's November 18th, 2015. You know exactly what he meant.

18           Martinez is also charged with vaginally raping Maria  
19 on a specific occasion in January 2016. These charges charge a  
20 different act than the other acts that we just discussed. This  
21 is the time, you might remember, Maria testified, she was  
22 brought down to clean with Odie de la Cruz and that the  
23 defendant grabbed her and she hit him.

24           She told she came down with Odie. She had asked the  
25 defendant to get the key to the dentist office. He refused.

1 She told you, she didn't want to clean the lieutenant's office  
2 that day. She knew that once she started cleaning in the  
3 office, she was going to be raped again and she walked into the  
4 lieutenant's office to get sprays while Martinez was seated at  
5 the desk.

6 You know what happened next. He stuck out his arm to  
7 block her way.

8 "Answer: I pushed his arm down. He put his arm up.  
9 I pushed it down. He stuck it up again. He stuck it out. He  
10 pulled me towards him and that's when I did this to him. I did  
11 this to him, to the back of him because he was still sitting.

12 "Question: And you did this to him. Can you  
13 describe in words what you did?

14 "Answer: I hit him.

15 "Question: You hit him with your hand?

16 "Answer: Yes.

17 "Question: And what part of his body did you hit?

18 "Answer: His head."

19 And that's in the transcript at 175.

20 "Question: Why did you hit him?

21 "Answer: Because I didn't want him to rape me again.  
22 I was so tired of the same thing happening over and over and  
23 over again."

24 She said she was tired. That's what Danilda Osoria  
25 also told you that Maria was tired of going to clean for

1 Martinez and she was upset. And that's in her testimony. You  
2 can look at it at the transcript at 557.

3 "Question: Now she was asked what happened after you  
4 hit him?

5 "Answer: He stood up. He said, 'Do you know how  
6 much time you could get for hitting a lieutenant, don't you?'  
7 Martinez grabbed Maria. He started to grope her. He grabbed  
8 her arm. "He twisted my arm behind me and he was raising it  
9 up." I said, "You son of a bitch, it hurts." And he let go of  
10 it.

11 He groped Maria. She explained he was forcing her  
12 vagina.

13 "Answer: It was hard with my pants on. He was  
14 pressing in hard with his fingers. And then he lowered his  
15 pants and penetrated her vagina with his penis."

16 That's the transcript at 178.

17 You know at that time what happened while he was  
18 inside her. He stopped to look at the computer screen. He  
19 pulled up one camera on the computer to see where Odie was  
20 cleaning. He said no, no, no, it's okay. And he finished.  
21 And that's the transcript at 179 to 80.

22 You know that after this incident, Maria went into  
23 the bathroom and she describes, trying to empty the semen out  
24 of her and she closed the door and Odie came and she said, "You  
25 haven't finished yet?" And then she had to help Maria finish



1 cleaning.

2 And that's corroborated by Lieutenant Metzger's  
3 testimony. She told you when she had Inmate West clean, who  
4 regularly cleaned the lieutenant's office area for Metzger,  
5 that after Maria brought down the two other women, who you know  
6 were Odie de la Cruz and Maria, the area was still dirty and it  
7 needed to be cleaned.

8 For his conduct in January 2016 during the specific  
9 incident that's charged when the defendant raped Maria when she  
10 was cleaning with Odie, and he grabbed her arm and she hit him,  
11 the defendant is charged with four separate crimes. It's  
12 Counts 13, 14, 16 and -- deprivation of Maria's civil rights,  
13 aggravated sexual abuse, sexual abuse and sexual abuse of a  
14 ward and we'll go through them.

15 We'll start with aggravated sexual abuse. So we're  
16 now looking at the fourth column which is Count 14, which  
17 charges the acts in January 2016. You know that on that day,  
18 the defendant caused Maria to engage in a sexual act that he  
19 put his penis in her vagina. That he acted knowingly. That he  
20 used force against her, grabbing her, bending her arm, and that  
21 the offense was committed in the MDC.

22 And remember how the defendant looked in this period  
23 of time? You saw in this photo that's in Government's Exhibit  
24 213, how the defendant looked. It shows him muscular, strong,  
25 bigger than Maria with the ability to force her.

1           The defendant is also charged in Count 13 with  
2 violating Maria's civil rights in January 2016. First, you  
3 know he was acting under color of law. He had access to her  
4 because he was a lieutenant in the jail and he was bringing her  
5 down to clean and he was supervising her when this happened.

6           Second, he deprived her of her federal rights, her  
7 right as a sentenced prisoner to be free from cruel and unusual  
8 punishment, from being forced, from being raped.

9           Third, he acted willfully. And finally, that his  
10 conduct constituted aggravated sexual abuse, which is the crime  
11 that we just reviewed. That he forced Maria as a federal  
12 prisoner by penetrating her with his penis.

13           Now you know from the testimony the defendant used  
14 force for everything we've said. This is something else, a  
15 transcript at 179 that she said about the January --  
16 specifically about January 2016. She was asked:

17           "Question: Were you scared?

18           "Answer: Yes.

19           "Question: Did Lieutenant Martinez force you to have  
20 sex with him that day?

21           "Answer: Yes.

22           "Question: Did you want to have his penis inside  
23 you?

24           "Answer: No.

25           "Question: Did you feel like you had any choice?

1 "Answer: No."

2 And that's the transcript at 179.

3 You also know that Maria was scared. She told you  
4 about the force he used and the fears she felt. Now the  
5 evidence has established that the defendant is guilty of Count  
6 15 for his conduct in January 2016. You know that he caused  
7 Maria to engage in a sexual act, that he acted knowingly and  
8 that he placed her in fear.

9 You know he told her right before he raped her, "Do  
10 you know the time you could get for hitting a lieutenant?" She  
11 testified she was afraid. You know the offense was committed  
12 in a federal prison within the MDC.

13 The evidence in this case has established beyond a  
14 reasonable doubt that the defendant is also guilty of Count 15.  
15 Now Count 16 charges the defendant with sexual abuse of a ward.  
16 To go through this, the defendant caused the victim to engage  
17 in a sexual act on this date in January 2016. He acted  
18 knowingly. She was a sentenced prisoner in official detention.  
19 And she was under the custodial supervisory disciplinary  
20 authority of another. All of those elements have been  
21 established.

22 Now you heard during Maria's testimony that she took  
23 some steps to try to stop the abuse. One of the things she did  
24 was she called her friend Noel Lopez and she asked him to come  
25 visit. This is the transcript at 181.

1 "Question: Why was it important to you for Noel  
2 Lopez to come visit?

3 "Answer: Because that bastard said to me, 'Oh, they  
4 love you so much, they never come to see you.' I hadn't even  
5 had one visit.

6 "Question: And why did you want Noel Lopez to visit  
7 you?

8 "Answer: So that he would see that I had one person  
9 at least.

10 "Question: What, if anything, did you ask Noel Lopez  
11 to do when he came to visit you in the visiting room?

12 "Answer: I asked him to kiss me on the lips.

13 "Question: And did he kiss you on the lips?

14 "Answer: Yes, and I did, too.

15 "Question: Why did you ask him to do that?

16 "Answer: So that Martinez would see it.

17 "Question: And what, if anything, were you hoping  
18 would happen if Lieutenant Martinez saw that?

19 "Answer: I thought he would stop raping me."

20 That's the transcript at 184. Maria knew that there  
21 were cameras in the visiting room and that Martinez would be  
22 able to see what happened during that visit. So you heard from  
23 Maria's friend, Noel Lopez. He spoke to Maria in prison from a  
24 203 area code. He was from Connecticut. Maria sounded  
25 nervous, afraid and she sounded like she needed to talk to

1 somebody. She was begging me to see her.

2 And that he went to visit Maria once. He didn't  
3 remember exactly when. He told you that he thought it was cold  
4 out and it was in 2016. And that at first he found her happy  
5 but then she was nervous, lonely and desperate. And during the  
6 visit, Maria asked her to give him a kiss on the lips and a hug  
7 and he did. And that's at 305 to 307 and 309.

8 And you know that what Noel Lopez and Maria testified  
9 is true. It's corroborated by Government's Exhibit 205 which  
10 is Maria's visitor list and that she had a visit on January  
11 31st. And you know what that visit cost her. You know that  
12 Martinez was working and that he saw it. You could tell that  
13 he was working from Government's Exhibit 207. He was assigned  
14 as the east activities lieutenant, day watch, January 31st,  
15 2016.

16 And again, this is where this Government's Exhibit  
17 242-1 could be helpful about what the documents show. That the  
18 defendant started work that day at 8. He worked till 4. That  
19 the visit happened at 11:56 a.m. and let me lift it, so  
20 everyone can see it, that's in Government's Exhibit 205. And  
21 that he ended his shift at 4 p.m. That day.

22 Maria told you what happened after the visit, that  
23 things got worse. That Martinez grabbed her and he kissed her.  
24 he said, "Well, if that's what you want, I'll kiss you." And  
25 that he also said, "You'll see. When you get out, you'll see

1 I'm different. I'm not like that." And that's in the  
2 transcript at 187.

3 And you know that Martinez gave Maria his email  
4 address which she recalled was either CarlosRichMartinez at  
5 either Gmail or Hotmail and that's in the transcript at 187.

6 And you know from Government's Exhibit 211 in  
7 evidence that the defendant's email was actually  
8 [Carlos.Rich.Martinez@gmail.com](mailto:Carlos.Rich.Martinez@gmail.com). And you can see from this  
9 record that he even listed his alternative email address as  
10 [CRMartinez@BOP.gov](mailto:CRMartinez@BOP.gov) -- Bureau of Prisons.gov.

11 Now after Noel Lopez came, things got worse. Maria  
12 got desperate. She wanted him to stop. She decided she was  
13 going to say his name on the phone and maybe he would hear it.  
14 This is what she testified to. She knew her telephone calls  
15 were monitored. She wanted Martinez to know that she was  
16 saying his name on the phone, so he would leave her alone. So  
17 she called her friend, Larihelys Vargas. She told her friend  
18 to delete her connection to Maria on Facebook and she asked her  
19 to look up Carlos Rich Martinez and that Vargas found it  
20 immediately. And that Vargas actually went on Martinez's  
21 Facebook page and described photos of Martinez at a shooting  
22 range with a lot of people with children and a peroxide blonde  
23 woman. And that's the transcript at 190 to 191.

24 You also heard from Larihelys Vargas who was a friend  
25 of Maria's from New York City. They had cleaned hotels

1 together. And her testimony corroborates what Maria told you  
2 in large part. She was in contact with Maria while Maria was  
3 in prison. She told you her phone number, which we'll get to  
4 in a second. It ended in 4827. And that Maria called Vargas  
5 and asked her to look up the Facebook page of a guard who  
6 worked where she was. And that Maria gave her a man's name.  
7 She couldn't remember exactly.

8 And that Maria asked Vargas to delete Maria from her  
9 friend, so the man who she remembered as a guard would not see  
10 a friend in common. And that Vargas sent the guard a friend  
11 request and a message saying, "Hi." And she described the  
12 photos on the page, including photos of women and groups of  
13 men. And that at some point later, Maria called again and  
14 asked her to delete the guard's page. And that's in the  
15 transcript at 292 to 294 and 300.

16 She also told you thought there was something going  
17 on because Maria had asked about the guard but she didn't know  
18 exactly what it was. And Maria didn't say on the phone. You  
19 also know that this call happened on February 7th at 1:44 p.m.,  
20 based on the telephone record and the Facebook record.

21 So here, by the way, this exhibit will look different  
22 in the back, we have covered Maria's real name with this thing  
23 that says Maria but in the back, you'll see if you look at the  
24 evidence, it says her real name. So this is from Government's  
25 Exhibit 204 which is Maria's monitored call list. You could

1 see that she called for the number ending in 4827 which Vargas  
2 said was her phone number at 1:44 p.m. And that's the call  
3 between Maria and Vargas.

4 And now just after -- just while this call is going  
5 on, Government Exhibit 213, the Facebook records show that  
6 Larihelys Vargas sent Carlos Martinez a friend request and you  
7 can see that, that is February 7th. And now the time line  
8 here, remember, this is not easy for me, but it's UTC, right?  
9 And so there's a stipulation in evidence that says -- what does  
10 it say -- it says that, "In February 2016, UTC was five hours  
11 ahead of New York time."

12 And then this exhibit is also helpful for summarizing  
13 what the records say here. So you can see that on February 7th  
14 at 1:44 p.m., Maria begins the fifteen-minute call with Vargas  
15 and that's when the monitor call record and that at 1:53 p.m.,  
16 Vargas friend requests the defendant.

17 Now later that afternoon at 3:40 p.m., the defendant  
18 contacts Vargas via Facebook to ask if she knows him. And it's  
19 impossible to see on this, so let's see here, we can go through  
20 the conversation. He writes her, "Hi, you requested me. Do I  
21 know you? Yes, I did. You don't. Who are you? I just want  
22 to be your friend. Is that bad? Hell no, it's not. Just  
23 wondering why a beautiful woman like you wants to request me.  
24 Okay."

25 Then it goes on. "Are you married or something?"



1 And then he asks her, "Where do you live?" And she says, "I  
2 don't want to get in trouble." And she says, "Buffalo." And  
3 then he says, "Yes, I am married."

4 And then he says, "It's okay. Oh, okay. And then he  
5 says, "I'm happily married, sorry." And she says, "That's  
6 good." And he says, "Nice meeting you. Take care." And she  
7 says, "You, too."

8 And you should read the whole Facebook thing. It's  
9 in evidence. It's a little far away from me but you know that  
10 all happened February 7th in the afternoon at 1:44, the call we  
11 just talked about. A couple of minutes later, is the friend  
12 request. Later that afternoon is this conversation, this  
13 messaging conversation that Vargas has with Martinez.

14 You know from Government's Exhibit 204 that the next  
15 day, February 8th, at 9:37 a.m., Officer Rodriguez monitored or  
16 listened -- I mean listened to that phone call and you can tell  
17 from this record, that's Rodriguez's TF number, TF 14643 and it  
18 shows that he listened to this call twice. He listened to it  
19 on February 8th which is the day after the call at 9:37 and he  
20 listened to it again at 10:10 and he listened to the whole  
21 thing.

22 And he told you because he testified what he  
23 remembered about that call. That Maria spoke in Spanish to a  
24 female friend, asked for a favor for the friend to look up  
25 information about someone who was in. Maria asked the friend

1 to delete any photos of them together first. She spelled the  
2 name Carlos Martinez with the middle initial. That she asked  
3 the friend to find out if Martinez was with somebody and at the  
4 time, Martinez was a lieutenant with a lot of responsibility in  
5 the jail including for the SHU. And that's in the transcript  
6 at 479 to 481.

7 Now you know that right after Martinez monitored to  
8 that or listened to that phone call, he looked out for the  
9 defendant and he called and he gave him a heads up. How do you  
10 know that? He told you that but it's also at Government's  
11 Exhibit 212-A and these are the T-Mobile records for the  
12 defendant's phone. You could see it's subscribed to him at his  
13 address and his phone number ends in 8719.

14 And 212-B are the toll records for that phone and  
15 they show -- actually easier for me to see it on this, if you  
16 guys don't mind -- and this is Government's Exhibit 242-1 for  
17 the record, that at 9:33 a.m., Rodriguez listened to the phone  
18 call -- listened to a phone call between Maria and Vargas. And  
19 this is on February 8th.

20 At 9:58 a.m., he listens to another call with Vargas.  
21 This is not the 1:44 p.m. call. Then at 10:06 a.m., the MDC  
22 calls the defendant's cell phone. And then he listens to it  
23 again and then there's a phone call at 10:21 a.m., phone call  
24 from the MDC to Martinez's cell phone.

25 You also know because Rodriguez testified that he did

1 it. And he told you that his phone number, when he calls  
2 someone who is not at the MDC from his staff, shows up 718-840-  
3 5000 and Special Agent Riley told you that she checked and that  
4 -- the same thing.

5 And Rodriguez also told you about Martinez's reaction  
6 to the call. He called Martinez and at first he just told him  
7 about the call. And Martinez said, "Are you sure?" And then  
8 he played him the call and Martinez said, "Oh, shit." And then  
9 he said, "I'm not going to bring those women down anymore. I  
10 don't want anymore problems."

11 And that's in the transcript at 484 to 485. And at  
12 the time, Rodriguez didn't even know what women he was bringing  
13 down to clean but that's what he understood Martinez to be  
14 saying. He knew exactly what it was.

15 now after the Facebook call, Martinez came to the  
16 unit -- this is Maria's testimony. So he went up to the unit.  
17 When the unit officer was tall, fat and had dreadlocks. She  
18 didn't know his name. That's the only thing she could remember  
19 describing. That's in the transcript at 193.

20 And she identified the photo of the person who called  
21 for her that night, which is Government's Exhibit 10. Now you  
22 know from D'Anello Smith's testimony that Government Exhibit 10  
23 is a photo of Raymond King. And on -- this is the True Access  
24 record for Raymond King which shows that -- remember that  
25 unique identifier for him -- is 14637.

1           And you know that on February 9th, he was on post in  
2 Unit 6-South and that at 12:43 a.m., remember it's the offense  
3 -- the event date -- while King was a unit officer, Martinez  
4 went to the unit -- went to Unit 6-South to perform a PREA  
5 round.

6           And you know why he went there. It wasn't for the  
7 round at all. Maria told you. Around 12 p.m., Monday night,  
8 the unit officer called her out of bed, said the lieutenant  
9 wanted to speak to her and that first inside the unit office,  
10 Martinez spoke to Odie or Odie de la Cruz, but then he called  
11 in Maria and spoke to her alone.

12           I said, "What?" He said, "You know what you did?  
13 Tell me why you did that." I said, "I knew from the  
14 beginning," I said, "because I am tired. I am so tired. I am  
15 so tired. I just don't know what to do at this point." That's  
16 the transcript at 195 and 196.

17           Martinez told her, "You're now in investigation. You  
18 could get more time." And you know that Maria did not want to  
19 be in investigation. I did not want to get into trouble. I  
20 didn't want to be sent to the SHU. When your in investigation,  
21 you get sent to the SHU during the time they investigate that.  
22 It doesn't matter what it is. You could spend months in the  
23 SHU.

24           And she described the SHU to you, what her  
25 understanding was of the SHU. It was a punishment room with no

1 space and a little bed where they give you your food like a dog  
2 and only get taken twice -- out twice a week to wash. That's  
3 in the transcript at 198.

4 And you know that her description is very similar to  
5 what the SHU looked like. There's a bed. There's a toilet.  
6 It's small. This is the door. I think you can see the little  
7 thing that they attach your food to you. Those are  
8 Government's Exhibit's 245-C and D in evidence.

9 You also heard that Danilda Lora Osoria recalled  
10 Martinez coming to the unit and she remembered it happening  
11 around the same time that there was a fight between two  
12 inmates, LaToya and Yesenia. Government's Exhibit 221 shows  
13 that this happened between -- on February 6th. And she thought  
14 that -- when Martinez came, he came between 12 a.m. and 1 a.m.

15 And that she observed Martinez going to the unit  
16 office and then Odie and then when Odie left, Maria went in.

17 Now she also recalled that Maria told her that  
18 Rodriguez had questioned her about the call she made where she  
19 said something on the phone with Martinez. She really didn't  
20 know that much about it. And Maria told you what happened when  
21 Rodriguez went to see her. He came to see her in the unit  
22 office. He closed the door. He sat down. He said to me,  
23 "Tell me what's going on or what happened." And I said to him  
24 about what? And he said, "Come on. We speak the language. I  
25 listened to the recording and I asked him if I could get into

1 trouble and he said yes. And he said to me, that's why I took  
2 this case because if somebody else had taken it, you would be  
3 in the SHU or would have been transferred by now."

4 And he told you that -- and she told that she was  
5 scared, and nervous and that he told her not to talk to Vargas  
6 again. And that's in the transcript at 201 to 203.

7 And you also heard about that from Officer Rodriguez.  
8 He told you that he went to see Maria. He told her if there  
9 was an investigation involving staff, that his supervisor Geier  
10 would have to handle it. It would be -- meaning it would be  
11 out of his hands.

12 "Question: What did you say to her about what your  
13 supervisor wanted to do with her?

14 "Answer: Put her in segregation. You know what that  
15 is, SHU.

16 "Question: So what did you tell her to do?

17 "Answer: I told her to cut the shit.

18 "Question: What did she say?

19 "Answer: She wasn't going to. She was just going to  
20 let it go. She didn't want any problem and she did not want to  
21 go to the hole.

22 "Question: Based upon your conversation with  
23 Lieutenant. Martinez, and Maria, did you think there was more  
24 going on?" This is Officer Rodriguez. What did he say?

25 "Answer: It was a possibility, yes."

1 That's the transcript at 489 to 90.

2 Next slide:

3 "Question: You testified that you felt Maria wasn't  
4 being fully honest with you.

5 "Answer: Correct.

6 "Question: And you felt there was more to the story.

7 "Answer: Correct.

8 "Question: Did you share those suspicions with  
9 Geier? That was the supervisor.

10 "Answer: No.

11 "Question: In fact, at the time, you suspected Maria  
12 and Martinez had some type of inappropriate relationship.

13 "Answer: Yes.

14 "Question: Did you tell that to Geier?

15 "Answer: No, nuh-uh.

16 "Question: Did Geier speak Spanish?

17 "Answer: No.

18 "Question: What language was the call between Maria  
19 and her friend in?

20 "Answer: Spanish.

21 "Question: Did you save the call?

22 "Answer: No.

23 "Question: And you know that Rodriguez was covering  
24 for Martinez. He was looking out for his fellow officer. He  
25 admitted that he -- what he did admit -- he admitted that he

1 was not honest with the government when he was first  
2 interviewed. He testified that he continued, even after that,  
3 to hide information, specifically the fact that he played the  
4 call from Martinez and that he had told Martinez even about the  
5 Facebook call and the inmate involved and why? Why? He told  
6 you. He was afraid of being called a rat and he did not want  
7 any problems inside the MDC.

8 That testimony came from someone who had worked at  
9 the MDC for over a decade. And he had been at lieutenant. He  
10 had worked with the supervisor and he was assigned to  
11 investigations. If he was afraid to come forward, and to tell  
12 the truth about Martinez, imagine the fear that kept Maria from  
13 coming forward.

14 Maria told you there was a second occasion when  
15 Martinez confronted her about the Facebook call and that it was  
16 Danilda Lora's birthday and it was Dominican Independence Day.  
17 And that she -- that's how she remembered the exact date  
18 because of those two things happened. And she said, "I spoke  
19 to him about the call and he wanted to know why. They were  
20 alone in the lieutenant's office. And he said, "But why? Why  
21 did you do it?" And she told him she was tired -- that's in  
22 the transcript at 208 and Danilda Lora told you she was there  
23 for this, that she remembered it was her birthday and Dominican  
24 Independence Day and that she and Maria had gone down to the  
25 second floor to get cleaning supplies out of the office. And



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1 that Nunez and Martinez were both there and that at some point,  
2 Martinez spoke to Maria alone in the lieutenant's office for  
3 eight minutes.

4 And that's the transcript at 572 to 575. And you  
5 know that Nunez was working that day and that's another place  
6 that you could use the board, if you wanted to.

7 Page 3 of the board shows the defendant was working  
8 on February 27th. He worked at 8 to 4. That's in his daily  
9 assignments. That Nunez started at noon and was therefore in  
10 the MDC, that the defendant worked till 4. And Nunez ended at  
11 8:30. And again, the sources for all of that information is  
12 over here to the right if you want to check it.

13 Now Maria told you that there was a time where she  
14 didn't see the defendant for many weeks. That's in the  
15 transcript at 210 but then one day in April, he came to the  
16 unit for the count. And she didn't know exactly when it was.  
17 She knew it was before she left for immigration custody in  
18 April and if you look at Martinez's work records, which are in  
19 evidence at Government's Exhibit 207, it shows that he was  
20 assigned as east activity lieutenant on two days in April;  
21 April 15th and April 16th. And you know -- and what else did  
22 Maria tell you? She said she didn't see him for many weeks  
23 after April until April when he came to the unit for the count  
24 and then that day, she heard she was being called down to clean  
25 and she thought Odie was going to go with her but then Odie

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1 came over and said, "I'm going to have a visitor, so you have  
2 to go alone." And that's in the transcript at 211.

3 Maria went to the lieutenant's office. Martinez was  
4 seated in his chair. She went to empty trash bags in the area  
5 outside the lieutenant's office. Martinez came into that --  
6 Nunez came into that hallway. Remember, this is Officer Nunez,  
7 Government's Exhibit 7, and he said to her, "Who are you here  
8 with?" And she said Martinez and he shook his head. She kept  
9 cleaning and Nunez left.

10 Now you know also from the records that on April 15th  
11 and 16th, that Nunez was working that day in shifts that  
12 overlapped with the defendant. And again, this is 220-B in  
13 evidence.

14 And it's also the bottom of this board, 242-1, page  
15 4. Maria told you what happened. He grabbed her. He started  
16 to kiss me. He started to grope me. He was trying to pull  
17 down my pants. He would pull them down. I would pull them up.  
18 He pulled her over to the chair. He grabbed her. He bent her  
19 over the chair, penetrating her from behind.

20 She said, "He put me on all fours. He grabbed me but  
21 he couldn't really grab me as tightly as he usually did. He  
22 had injured his finger and he had something like a cast on his  
23 finger. That was the only time he did not ejaculate inside me.  
24 And when he was done, the defendant got a rag, wiped her off.  
25 And he said, 'Since you're going to go to immigration, it could

1 be they'll give you a checkup.'" "

2 And you know from Special Agent Riley's testimony,  
3 that just before this, April 7th, 2016, the defendant went to  
4 the hospital after injuring his hand, his hand was bleeding and  
5 he got x-rays. You know that when Maria returned to the unit,  
6 she saw Odie and Odie told her that he visitor didn't come.  
7 And you can see that in evidence, Government's Exhibit 235.  
8 Odie didn't get any visits that day.

9 For his conduct on this day on April 2016, the  
10 defendant is charged with four separate crimes; deprivation of  
11 Maria's civil rights, aggravated sexual abuse, sexual abuse,  
12 and sexual abuse of a ward.

13 I'll start with the aggravated sexual abuse. Now  
14 we're in the last column. This is the last series of charges.  
15 First, you know that the defendant with his conduct on the day  
16 in April caused Maria to engage in a sexual act. Here, he's  
17 penetrated his vagina -- her vagina with his penis and you know  
18 that he acted knowingly. And you know that he used force  
19 against her instead. She told you how he pulled her over, how  
20 he put her on all fours, and how he penetrated her from behind.  
21 And you know that this offense was committed inside the MDC,  
22 which is a federal prison. The evidence has established the  
23 defendant's guilt on Count 18.

24 For his conduct on that date in April, the defendant  
25 is also charged in Count 17, violating Maria's civil rights.

1 First, he was acting under color of law. You know that he had  
2 access to Maria on that day because of his position within the  
3 jail.

4 Second, he willfully deprived her of her federal  
5 rights, her rights as a sentenced prisoner to be free from  
6 cruel and unusual punishment.

7 Third, he acted willfully with the specific intent  
8 to deprive her of her right. You know it from the way he  
9 treated her, grabbing her, pushing her, penetrating her.

10 And finally you know from what we just reviewed, that  
11 his conduct constituted aggravated sexual abuse, which is the  
12 count we just went over.

13 You know that the defendant used force and that Maria  
14 was scared. She described to you how she felt.

15 "Question: Were you scared while he was raping you?"

16 And this is specifically about this April 2016  
17 incident.

18 "Question: Did you want to have his penis inside you  
19 that day?

20 "Answer: No.

21 "Question: Did he force you?

22 "Answer: Yes.

23 "Question: Did you feel like you had any choice?

24 "Answer: No."

25 And that's in the transcript at 220 to 221.

1           The evidence has also established that the defendant  
2 is guilty of Count 19 which is a different crime and charges  
3 him with sexual abuse in a prison on this day on April 2016.  
4 And on that day he caused her -- the victim to engage in a  
5 sexual act, that he acted knowingly, that he threatened the  
6 victim, and placed her in fear. And that the offense was  
7 committed in a federal prison.

8           The last count, Count 20, charges the defendant with  
9 sexual abuse of a ward. As we just discussed, he caused Maria  
10 to engage in a sexual act. He acted knowingly and you know  
11 that Maria was a sentenced prisoner, that she was in official  
12 detention.

13           Finally, you know that Maria was being supervised by  
14 the defendant in her cleaning at the time this happened which  
15 means that she was under his authority.

16           I want to thank you for your time, for your  
17 attention. You know, prison is a tough place. It's not easy  
18 to serve prison time, even if you're guilty, even if you plead  
19 guilty, even if you accept that you made a mistake and that you  
20 deserve to be punished.

21           But make no mistake about it, Maria was not sentenced  
22 to 36 months in jail and five months of sexual abuse, five  
23 months of being raped, groped, forced against her will and  
24 using fear, to be used and abused by that man.

25

Government Summations - Argentieri

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1           And now maybe the defendant will explain this  
2 evidence by conceding some part of it.

3           MR. RICCO: Objection.

4           THE COURT: Sustained.

5           MS. ARGENTIERI: Maybe the defendant and defense  
6 counsel in his summation will concede some --

7           MR. RICCO: Objection.

8           THE COURT: Sustained.

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Government Summations - Argentieri

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1 MS. ARGENTIERI: If, thank you, Judge.

2 If the defendant concedes some part of this and says  
3 maybe he had sex with her on one occasion but it wasn't with  
4 force and it wasn't against her will, but I am asking you that  
5 you listen to all of the arguments in this case and when you go  
6 back and you start to deliberate, keep not in the back of your  
7 mind but in the front of your mind, Maria. Think of her  
8 demeanor as she testified, the fear in her voice, the physical  
9 reaction she had when she looked over at the defendant. I  
10 can't, she said. I can't.

11 You were here for all of that. You stood witness as  
12 she testified about when she was abused over and over and over  
13 again. Those were her words. She used them to describe an  
14 experience that is beyond what most of us could even imagine,  
15 let alone endure. Those words are hers to use and no one  
16 else's. Over and over and over again, he raped her. The keys  
17 on his belt haunting her to this day.

18 And yet, this trial is not really about Maria. It's  
19 about Lieutenant. Carlos Martinez. It's about his choice.  
20 It's about his abuse of power. It's about his abuse of  
21 opportunity. His abuse of the trust and the faith that we put,  
22 not in the chaplain, not in the MDC, but in him as a federal  
23 law enforcement officer. Hold him accountable. Find him  
24 guilty on all counts because that is what the evidence in this  
25 case demands and it's what justice demands.

Government Summations - Argentieri

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1 Thank you for your time.

2 THE COURT: We're going to take a short recess before  
3 the defense summations.

4 THE CLERK: All rise.

5 (Jury exits courtroom.)

6 THE CLERK: Please be seated.

7 MS. ARGENTIERI: Judge, can we take a five minute --  
8 can we go outside for a few minutes?

9 THE COURT: Yes, of course.

10 MS. ARGENTIERI: Thank you.

11 THE COURT: It was not just for the jury.

12 MS. ARGENTIERI: Okay.

13 (Recess from 12:17 p.m., until 12:24 p.m.)

14 THE COURT: We're bringing in the jury.

15 (Pause)

16 THE COURT: Who is going to give the rebuttal?

17 MS. SHIHATA: I will, your Honor.

18 THE COURT: Do you want to go right after or do you  
19 want a break?

20 MS. SHIHATA: Whatever the Court prefers.

21 THE COURT: Well, let's see how it goes.

22 THE CLERK: All rise.

23 (Jury enters courtroom.)

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Ricco.



Defendant's Summations - Ricco

1008

1 MR. RICCO: Always think long and hard, maybe too  
2 hard about what I am going to say to the jury. Why? It's  
3 important. It's not gamesmanship. It's not a game. It's  
4 real. And I thought a long time and been thinking a long time  
5 about what I want to say and as I got up this morning to  
6 prepare for my summation -- I'm an early morning person as many  
7 people in the courtroom know -- I was preparing my remarks and  
8 there was a documentary on about Vietnam and I fell asleep.  
9 And I woke up about a half -- about an hour-and-a-half later  
10 and my mind, I envisioned myself coming up here this morning  
11 and when I looked up to speak, all of you were knocked out  
12 sleeping. And I said to myself, oh, boy, you better start over  
13 again. So I did. I started all over again.

14 I'm a great believer in what things mean. I think  
15 it's very easy in our society to point and say oh, he did this,  
16 he did that. We understand the legacy of what that has had in  
17 our country. And so I am into what things mean.

18 Our hope in selecting the jury was that we would find  
19 jurors who could handle allegations like this and still say you  
20 know what, I am going to listen all the way through. I am  
21 going to uphold my part of this and I am going to listen all  
22 the way through.

23 Now I am going to tell you this, the government said  
24 an interesting thing -- two interesting things that -- and I am  
25 not going to stand up here and respond to those things, it's

1 too long. Now these are called summations. Okay. Sorry.  
2 These are called summations. This is what we're talking about.  
3 These are called summations and -- but it's not about cliches.  
4 So one of the things the government says in its -- well, the  
5 defense wants you to believe those parts of Maria's testimony  
6 that satisfies them but not to believe other parts. Well,  
7 where did they get that from?

8 Who said that? Why was that said to you? What is  
9 that supposed to imply? They got the burden of proof. There's  
10 no part of her testimony that the defense wants or wants you to  
11 believe. I want you to question all of it, not part of it, not  
12 some of it, all of it. That's what the defense really wants  
13 you to believe, regardless of what they say. That's their  
14 opinion.

15 The other thing that they said which is contrary to  
16 their burden of proof, is that if the defense gets up here and  
17 concedes facts, well what does that mean when they say that?  
18 I'm going to tell you what it means. They're worried about  
19 something. And they're anticipating what, a problem. And so  
20 they're trying to get your mind posed for that.

21 This case has 20 counts, let's be clear. The burden  
22 for proving those 20 counts is right here. They got to prove  
23 each count and every element in those 20 counts. Does that  
24 sound like a concession to you? It is not.

25 And I may review these facts with you and sure, there

Defendant's Summations - Ricco

1010

1 are many facts here that are not in dispute. They're not in  
2 dispute. That's not concession. That's fact. That's true.

3 Now we're not coming in with a fancy PowerPoint,  
4 expensive charts, exhibits, walking you through those parts of  
5 the testimony, ignoring other parts. People can do that if  
6 they want to, that's a choice. This is what I choose for you  
7 to think, as hard it is, for you to be true to your oath.

8 To be true to the oath; and what is that oath?  
9 Lieutenant. Martinez, can you stand up? That oath says right  
10 now, right here, even after that summation, the man standing  
11 there is protected by our laws and the protection that he has  
12 under our laws is that in your mind, please presume him to be  
13 innocent, not halfway guilty, not concededly guilty. He is  
14 presumed as we stand -- he stands here right now, to be not  
15 guilty, to be presumed innocent. That's the law of our  
16 country. Please sit down.

17 Now I want you to go back with some concepts and  
18 they're going to give me the hi sign, the people at the back,  
19 Mr. Martinez here, and Mr. Rollock, because I don't want to  
20 speak for them. I know that all of you are going to have  
21 questions. You're going to want to look at the testimony and I  
22 think that the sooner that you get to it, the ends of justice  
23 will be best served.

24 I wanted to start by thanking Judge Korman. For  
25 what? For doing his job. What is it? To preside over a case.

Defendant's Summations - Ricco

1011

1 To make sure that the questions that are supposed to be asked  
2 are asked, and the ones that aren't, aren't.

3 It's a precious opportunity to be part of this  
4 process. It's not rhetoric. It's a precious opportunity that  
5 we belittle each day. You got to raise it up. You got to hold  
6 the government to its burden of proof, with all the charts and  
7 exhibits and PowerPoint, big time, how does the government get  
8 to the positions that it gets in? It grabs onto a theory and  
9 then runs with it, then runs right over anything that questions  
10 it.

11 So that's what a trial does. And in this process  
12 means something to the lawyers, all of us that appear in these  
13 courtrooms. You heard from a particular lawyer. His name was  
14 Matt Kluger. He told you about the important role that we play  
15 in these proceedings.

16 So, ladies and gentlemen, over these last few days,  
17 we had an opportunity to dig into some very serious charges,  
18 heavy charges, no question about it. Charges not to be taken  
19 lightly by anyone and you've had an opportunity to hear the  
20 evidence. Now you have to hold the government to its burden of  
21 proof. Not my burden of proof. To the extent that the  
22 government comes up here, talking about me afterwards, they in  
23 trouble. This case is not about me. This case is about the  
24 facts and the burden of proof.

25 But this is my final opportunity to talk to you

Defendant's Summations - Ricco

1012

1 about, in summation, not a PhD dissertation, in summation,  
2 basic concepts that I want you to take with you into the back  
3 as you review the evidence, and you will.

4 Here's the basic issue. The government has not  
5 established by reliable, credible evidence, that Lieutenant.  
6 Martinez was involved in forcible sexual activity with Maria as  
7 Maria claims.

8 Now in order for them to do that, for example, the  
9 government has to kind of change the facts a little bit, to  
10 make it fit in. The testimony by Maria was that she was raped  
11 at least ten times, forcibly; at least ten times.

12 But check out -- check out the time line. Between  
13 December 13th and that phone call at the end of January and  
14 Facebook, there's records in evidence as to when he was at the  
15 jail. He was only at the jail five times after December 13th.  
16 That's a fact. That's not a concession.

17 So where did the ten or more rapes happen if he's not  
18 there? And then according to the testimony, not a concession  
19 but a fact, there's no sex between Facebook, which is February  
20 and the last -- they say April, that's not the testimony -- the  
21 testimony says the last weekend that I was in MDC in April.  
22 Now they took the weekend part off of the testimony because it  
23 doesn't support their theory of proof. But when you go in the  
24 back and you look at the testimony, it will say last weekend at  
25 MDC. Fact.

1           So what does it mean? Now Maria claims that on that  
2 last time, there was one last rape for the road. Where did the  
3 over ten rapes happen? On what days did they happen? On what  
4 occasions did they happen. And that's why when the government  
5 puts up the PowerPoint, we're down to four events because those  
6 are the numbers That fit into the time line consistent with his  
7 employment daily activity record. And then they footnote out  
8 the actual testimony That they base it on which is Maria.

9           Now, our basic concept is this. Maria is an  
10 inherently unreliable opportunist who manipulates her friends.  
11 She said she manipulated her friends. She got Ms. Vargas and  
12 Mr. Lopez involved. Neither one of them are speaking to her  
13 today. She manipulates BOP people, staff, prosecutors, a  
14 federal judge, and even her own lawyer to do what she wants to  
15 do to get what she wants.

16           Now some people may say well, if you say that you're  
17 attacking a victim. I'm not about attacking nobody. That's  
18 what she said on direct testimony. That's before I even got up  
19 here. My questions on cross was to explore what you heard the  
20 extent of which our witness can play this game and play it  
21 right.

22           Now some people underestimate me, not from my  
23 background. I learned you don't underestimate anybody. You  
24 take people for their word until they show you they can't be  
25 what, trusted. Right? That's a fair way to live. Take a man

1 or woman at they word, until they tell me there's something  
2 about them that says they can't be trusted. And when a person  
3 comes before me and says they've lied to and convinced federal  
4 prosecutors, who are good, they do their homework. They get it  
5 wrong. That's why we have a justice system.

6 That they lied to their own lawyer. What kind of a  
7 position would I be in? This would be worthless and that they  
8 lied to a United States district court judge. Now I'm finding  
9 out something about a person that makes me question what they  
10 say.

11 And what I submit to you is that Maria, our civil  
12 engineer turned drug dealer, wants to first stay in the United  
13 States. She don't want to go back to the Dominican Republic  
14 and it don't have nothing to do with somebody named Dioberto  
15 Torres, who probably doesn't even exist. I said probably. I  
16 don't have the burden of proof.

17 And number two, she found out a way to get paid.  
18 This case. There is nothing about Maria's past, all the  
19 testimony here, all her plans to secure comfortable position  
20 for herself in our country and her future, that you can say is  
21 a basis upon which for you to rely and establish guilt beyond a  
22 reasonable doubt as to any of the counts in this indictment,  
23 especially those requiring a finding of the Court.

24 And my opening was my hope that this trial -- that  
25 Maria would not get away with what she has done in federal

1 court before. I said it, manipulation, guile, and lies.

2 And that this case would be about the truth.

3 Reliable, accurate evidence, proof beyond a reasonable doubt.

4 That was my hope. Let's look closely at the questions that

5 were asked and the answers and the questions that were not

6 asked and let's see whether or not they amount to the

7 government establishing their burden of proof.

8 The places where I want to start, and I'm going to

9 have to start talking fast, is where I am going to end, and

10 that's with that asylum application. That asylum application,

11 Maria testified that she wrote down and swore to under

12 penalties of perjury, that she was so distraught over the

13 Dioberto Torres' forcing her into drug business, that she was

14 crying, that she couldn't sleep at night. She was so depressed

15 in jail, that the other inmates contacted prison therapist on

16 her behalf, so that she could get treatment. That's what she

17 said.

18 All them prison records that you saw in this case,

19 you see therapist records? Nope.

20 It was so bad according to her petition signed --

21 asylum petition, that to this day thirteen years later, she

22 suffers from emotional, mental health problems that is going to

23 require continued therapy. That's her testimony.

24 She signed that petition, sworn under penalties of

25 perjury. Again, sworn statement. However, after repeatedly



1 being raped by that pig and little bastard, sitting over there,  
2 as he was described, in the opening and in the closing, over  
3 and over and over again. And in spite of the fact that each  
4 government official in this case -- now usually it's the  
5 defense that's saying believe the criminals and the government  
6 is saying you've got to believe law enforcement. That kind of  
7 flipped in this case.

8           Each government official who testified in this case  
9 be it Lieutenant. Metzger, be it Senior Officer Smith, or SIS  
10 Officer Tomas Rodriguez, who were trained and experienced, none  
11 of them noticed anything wrong with her. The person who swore  
12 to this day that she continues to suffer emotional problems  
13 from being forced into slavery to sell drugs by a guy named  
14 Dioberto Torres.

15           Each of these witnesses that I just described,  
16 Lieutenant. Metzger, Senior Officer Smith, SIS Officer Tomas  
17 Rodriguez had an opportunity to work with Maria and/or interact  
18 with Maria during this time period, with exception of the one  
19 day when she got caught violating institutional rules and she  
20 cried. It was just like Lieutenant. Metzger said, she was  
21 fine. Each one of these distinguished, dedicated officers, all  
22 have specialized training. They just not hey, Joe, what do you  
23 think? These are officers who have attended training on how to  
24 pick up the subtly of rape in prison. It's not like the  
25 street. People in prison are scared to say that something

1 happened to them. They're scared. They're not scared to go to  
2 the box, they want to get to the box.

3 They're scared of being raped and retaliated against  
4 by inmates or whoever is hurting them. And as the officers,  
5 you've heard me ask the question, they become the eyes and the  
6 ears in picking up on things. The things that you think they  
7 don't know about, that you don't. And these officers said the  
8 Bureau of Prisons takes this seriously. That the policy is  
9 zero tolerance. It's called the Prison Rape Elimination Act.

10 And as to those witnesses, let's see what happened  
11 here. SIS Officer Rodriguez, Senior officer Smith, and Metzger  
12 are trained in the subtleties of rape in a prison environment.  
13 They never observed Maria to be under any stress at all, not  
14 even the stress from Dioberto Torres.

15 Officer Smith, who is fluent in Spanish, becomes  
16 important because sometimes people hide behind language. He's  
17 fluent in Spanish. He's transporting officers. He's picking  
18 up on the conversation. He's picking up on the vibe. That's  
19 his job. He transported Maria down to a place where she said  
20 she was raped over and over and over and over again, had to be  
21 more than ten times within one month according to the charts.  
22 And he even escorted her there on one day when she said she was  
23 raped. And when he came back, the defense asked -- the defense  
24 asked, "Officer Smith, you had all that training for years and  
25 years, did you see any signs of a person who was under stress

Defendant's Summations - Ricco

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1 for sexual assault or rape?"

2           You all saw his answer. And you heard his answer.  
3 He thought about it. And he said, "Counselor, you know, I  
4 never did." And the way he answered that question told you the  
5 following; nobody had ever asked him that before because he  
6 thought about it.

7           Now on direct examination, the government that has  
8 the burden of proof that this rape happened, they asked  
9 Metzger, Smith, Rodriguez, whether they were aware of PREA,  
10 whether or not they had a PREA training. They said yes. But  
11 not a single officer was asked a question that is critical to  
12 proving forcible rape. It's not a misleading question. It's a  
13 simple question.

14           And these witnesses are government witnesses and with  
15 your training and experience, did you ever see at any time  
16 signs of this? No. Now the government has two summations.  
17 They didn't touch it in their first summation but when they  
18 come up for their rebuttal, where they're supposed to be  
19 commenting on what I said, and when they're giving you the  
20 explanation, ask yourself when they're showing you the minutia  
21 in the charts and the records and the pictures taken on the SHU  
22 unit that the person never been to, ask yourself, prosecutors,  
23 why didn't you ask these officers that important question?

24           And after Mr. Ricco did ask them, there's no rebuttal  
25 questions about it. The answer is because it doesn't support

1 Maria's theory that she sold to them and so you don't ask  
2 period.

3 The answer to that question, particularly on the very  
4 date that the witness said they was raped, forcibly raped,  
5 raises a serious doubt as to whether or not that happened. And  
6 so why not ask that question? Somebody should ask that  
7 question and if it takes the defense to ask it, so be it.

8 Now that question that is her appearance, let's not  
9 fool ourselves. That question was asked. It asked of Melva  
10 Vasquez, Danilda Lora Osoria and Kiara Maldonado. They all  
11 testified oh, she was upset and crying and under stress.

12 Now each of these women have stuff in common. I'm  
13 not going to get into it. You know what it is. Each of them  
14 associated themselves with the greatest -- well, we have me  
15 moving towards the mic -- they've associated themselves with  
16 the greatest menace that has destroyed our society in the last  
17 few years, the drug trade. Good old honest, straight up, you  
18 could rely upon them to be honest with you, drug trade.

19 Each woman has imported guile, trickery and deceit  
20 and daring to do something that the people in your life would  
21 never do. They put aside their responsibilities. Some of them  
22 put aside the responsibility of their children to engage in  
23 drug trafficking.

24 There was no little girl who testified here. The  
25 government says something about some little girl -- there ain't

1 no little girl who testified here. Kiara Maldonado is a 24-  
2 year-old woman, who had two drug convictions. Ain't no little  
3 girl about her. She has a state conviction for drugs, put on  
4 probation and was sent to prison on the federal drug violation.  
5 She's in the drug trade.

6 My question to her, you have two children, you're 24-  
7 years-old, just stop, if you can. The question was put to them  
8 to get those signs with the person is going on. So why didn't  
9 you ask the officers that's trained? Well, Lieutenant. Metzger  
10 was asked:

11 "Question: Had any inmate or detainee ever come up  
12 to you and complain about being raped or improper sexual  
13 contact during your entire career?" That was the question that  
14 was asked. Had anybody else come up to you. And of course she  
15 said no. But that's a sucker question.

16 The real question for this case is during the time  
17 period of this case, Lieutenant. Metzger, did you observe  
18 conditions or become aware that Maria suffered from any signs  
19 from distress from repeated, repeated rape? That question was  
20 asked by the defense. All she had to say was yes. They're not  
21 my witnesses. I didn't prep those witness. They're government  
22 witnesses. That's all she had to say yes. She said no. And  
23 what does that no mean?

24 The same question was asked of Smith and Rodriguez.  
25 Now by the way, there's a lot been said here about Officer

1 Rodriguez but there's a fundamental flaw in what they say. He  
2 reported. They did not comment about that. He didn't tell him  
3 he played the phone call to Lieutenant. Martinez. He's not  
4 supposed to. He didn't know what the call was about. He  
5 didn't want to see him get killed. So he played him the phone  
6 call. He didn't give him a heads up.

7           What does that mean, he gave him a heads up? You're  
8 in trouble for rape. He said, "Hey, some people are trying to  
9 get some information on you. Watch yourself." Why would he  
10 not do that? That doesn't make him a rat. That's just a  
11 cliché that has nothing to do with this case. He reported it  
12 and it's because he reported it that there was an interview  
13 with Maria in the first place because his supervisor said go  
14 interview him.

15           Now let's look at the quality, the seriousness, the  
16 vast individual and collected experiences of these dedicated  
17 officers, two of them spoke Spanish and what did they say?  
18 They didn't see it.

19           Now these trained officers testified under oath.  
20 They told you something about the person who was described as a  
21 pig and a little bastard. They said he was a highly respected  
22 officer at the jail. Coverup? That they had worked for him  
23 for years. And they told him he was a respected staff person.

24           You saw their quality, these officers that testified.  
25 You saw the level of commitment in their eyes, in their voices,

Defendant's Summations - Ricco

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1 in the way in which they really seriously took on the questions  
2 and their professional concern was there.

3 Does anyone on the jury really believe that  
4 Lieutenant. Metzger, Senior Officer Smith, and SIS Officer  
5 Rodriguez would come in here place their hand on the bible and  
6 tell you all a lie? Anybody get that impression of these  
7 officers? Anybody?

8 The government says they would lie and cover up but  
9 not the defendants, trust me. Even the ones that would lie for  
10 their employees.

11 While Lieutenant. Metzger testified that she didn't  
12 get any complaints, she testified on cross-examination that she  
13 was very much aware of prior complaints involving sex between  
14 inmate and staff at the MDC during her career. That there were  
15 complaints that were, in fact, made. Somebody investigated  
16 them. This whole idea that nobody would investigate them, who  
17 is going to believe me, blah, blah, blah. The only way she  
18 could tell you that it was is for it to have happened. And  
19 that those -- and this was kind of backed up and thought about  
20 on Special Agent Riley's testimony, because she says she was  
21 involved in the investigation for six months. That they did  
22 not include the name of Lieutenant. Martinez until she met with  
23 Maria.

24 And when she met with Maria, what did Maria say?  
25 Nuh-huh, you want to give me a lawyer first.

Defendant's Summations - Ricco

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1 I want to talk about the Plan B and then -- I have a  
2 lot of pages to go over but I may skip it because to me, the  
3 important thing is not to walk you through the evidence that  
4 you heard yourself. I hope that you will review it for Maria's  
5 sake and for Lieutenant. Martinez's sake.

6 The Plan B thing was troubling. According to the  
7 government, that's one of those "I got you" facts. This proves  
8 it. That Plan B pill does not prove nor can you even draw an  
9 inference from it, that somebody was raped or forced to have  
10 sex, especially in this case and I'm going to tell you why.

11 Although Maria, Melva, Kiara, Madonna and Danilda  
12 Lora Osoria all testified that they saw the package and that  
13 Danilda Lora Osoria testified that she read the package, ask  
14 yourself this question, why weren't any of these witnesses  
15 shown Government's Exhibit 240 and 240-A by the prosecutors?

16 Now they were shown everything else; pictures of SHU,  
17 this, that. Why wasn't 240 shown? Is this the package you  
18 saw? How about this? No. That still doesn't make it. How  
19 about this, yes. Why wasn't it shown? What was the purchase  
20 for during the course of the investigation? To stay over there  
21 in the rack, not to come out until the last witness as a result  
22 of a cross-examination by the defense lawyer? And if the  
23 defense lawyer doesn't raise it, it stays over there in that  
24 rack forever? Why wasn't it shown to the witness? Is this  
25 what you read? Is that what you saw?



Defendant's Summations - Ricco

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1           The government just like not asking these officers,  
2 if they saw the telltale signs of rape or sexual trauma in  
3 Maria, they never asked Vasquez, Maldonado, or Osoria, whether  
4 in fact, 240 was the same package or similar package to what  
5 they claim they saw in the early morning hours of December the  
6 14th, 2015.

7           Now not everyone would just accept them saying it.  
8 Somebody would question what did you see, how big was it, what  
9 happened to it or you flushed that thing down the toilet?  
10 Really?

11           The testimony in this case was that the packaging was  
12 so difficult that Maria said she broke the package to get the  
13 pill. She said it was in a plastic and she had to break the  
14 plastic pill out. That's the sworn testimony.

15           I'm telling you it was sworn testimony. You saw  
16 Agent Riley pop that pill out with one finger. Came out  
17 without -- effortlessly, without any destruction at all to the  
18 packaging. This item is obviously not the same item that Maria  
19 was talking about. It's the same Plan B One-Step that is sold  
20 by Rite Aid, because that's where they went to buy it but it  
21 doesn't mean it was the same. Maybe they were selling a  
22 different Rite Aid packaging. I don't know. But they got the  
23 burden of proof and somebody should have showed them witnesses  
24 that and asked them, was this in it. Did it look like this?

25           And remember the guy, Mr. Davis, from Rite Aid? He

1 would have been able to tell you what, oh, well that product  
2 changed since 2015. We now sell a different product and  
3 everybody would have said no problem, we understand. That can  
4 happen. It didn't happen because it was never shown to  
5 anybody. Why? Because it didn't support the case and raise  
6 reasonable doubt.

7           You found out from Kiara Maldonado that Maria  
8 referred to the pill that she had as the Plan B Pill when  
9 discussing it with fellow inmates. That's at page 643. With  
10 the agents in her interview, it was referred to as the Plan B  
11 Pill. That's at page 87 and 8.

12           And even Danilda Osoria said that she heard about the  
13 Plan B but she said that she never used that word, she only  
14 seen it on TV until she was confronted with her sworn testimony  
15 where she used it.

16           Now almost -- but when Maria testified in this case,  
17 even though she used that term all the time, she never once  
18 referred to it as Plan B. She called it the morning after  
19 pill. Why? Because Plan B is generic. It's like McDonald's.  
20 It's Viagra. Xerox. It doesn't require giving it to somebody  
21 to figure out what it is because the words Plan B in Spanish as  
22 you heard through the interpreters, through the witness, Plan B  
23 is written, P-L-A-N B. It's written the same.

24           You know what it is when you pick it up. They said  
25 they know what it was before they picked it up.

1           Now some of you say I don't care if that item wasn't  
2 shown to the witnesses. It's just like comparison charts and  
3 other documents. I believe he gave her the Plan B Pill and it  
4 was purchased from Rite Aid. I don't care anything about what  
5 you said. Someone can be the same.

6           And as to that, I would say that does not prove a  
7 forcible rape. That's not a concession. That's just the way  
8 some people think. And I am trying to reach you for word.

9           As the jurors, I submit that in this case, even if  
10 you want to believe it, that the government has proved beyond a  
11 reasonable doubt, an element in the 15 other counts in this  
12 case that require force, fear, threatening, some way was used  
13 to compel Maria to engage in a sexual act.

14           In addition to other facts, I am simply saying this,  
15 giving a person an abortion-type pill doesn't prove that their  
16 theory, right?

17           In addition, it's certainly a factor that you will  
18 consider when you don't have to establish force. That's not a  
19 concession. That's a fact. I'm not going to ignore that.  
20 That's a fact.

21           So I want to address very quickly some other points  
22 related to this whole idea about force. I want to get this out  
23 of the way very quickly. The government would like to stand up  
24 here and say Mr. Ricco attacked the witness. I didn't attack  
25 nobody. If asking questions is attacking somebody, then we'll

1 attack but other than that, no.

2           You heard the way she evaded even the most simplest  
3 questions I asked. Some of those questions required a simple  
4 yes or no and she's sitting up there trying to figure out where  
5 I am going and so she is working between the interpreter in her  
6 broken English to head me off. So when I asked her about the  
7 8,000, she says are you crazy, no, that never happened. But  
8 then when she figured I was talking about something that she  
9 could get into, she then took it back. That was a comment in  
10 this case.

11           She's trying to figure out where I was going. Now as  
12 to that, I would say this. She has lied to a judge as to me  
13 attacking her, who she said treated her with dignity and  
14 respect. Now she said she lied. I don't know if she did or  
15 she didn't. Her testimony said she did. I'm not trying to say  
16 well, she lied this time, she's telling the truth this time. I  
17 wouldn't believe her in any situation based upon what I heard.

18           But she said that she did and that she lied to her  
19 own lawyer. She is now making a claim for \$20 million. She  
20 said oh, I am so surprised by that. She didn't say she told  
21 her to lower it. In order to accomplish that, she needed a new  
22 story. She needed new agents to lie to and new lawyer who can  
23 vouch for that petition. So she came up with Maria, the person  
24 who is forced into the drug business, that's gotten so bad,  
25 yes, in the petition that I was raped by Lieutenant. Martinez,

1 repeatedly in his order.

2           Some of you may say she's not capable of lying.  
3 She's not capable of convincing law enforcement agents of a  
4 good story. You may say she is is not capable of convincing  
5 federal prosecutors of a story. Not capable of lying to her  
6 own lawyers. Well, the evidence in this case establishes not  
7 only that she is very capable of doing that, but that she in  
8 fact did it, according to her.

9           Let's start with Lieutenant. Martinez. She claimed  
10 that Lieutenant. Martinez pursued her with offensive,  
11 inappropriate language and that she was finally forced into  
12 oral sex and he forced his penis in her mouth and he forcibly  
13 picked her up and penetrated her on December 13th, 2015.

14           She claimed to all her friends in jail that Martinez  
15 -- though she said she didn't tell them any details because  
16 that's her testimony, she claims it was force, he penetrated  
17 her, he stuck it in there and she didn't want it.

18           She was forced and sexualized ten times between the  
19 time period. First she found out that Kiara Maldonado, that is  
20 the person they called Luger, she told you what on cross-  
21 examination? She said Maria was pursuing Lieutenant. Martinez.  
22 did you all hear it? If you didn't hear it and you think I'm  
23 making it up, it's in the transcripts. That's what she said.

24           She said -- it came out on cross. She said she  
25 informed the agents of this. Again, the government was silent

1 on this issue. Why? Not a single question to cure Maldonado,  
2 excuse me, what did you mean? Maria was pursuing Lieutenant.  
3 Martinez and that he gave her oral sex.

4 Why wasn't she asked what are you talking about?  
5 Where did you get that from? Why don't you hear that on the  
6 direct examination? What happens if the defense lawyer doesn't  
7 ask that question? How do you know that anything came up. I  
8 don't know if it's true or not but that's what she said, with  
9 no prior question.

10 See, you get these astronomical conviction rates when  
11 people don't ask questions and the standard is lowered and it  
12 becomes easy for people to convict because they see signs and  
13 charts and PowerPoints and somehow through all of the signs and  
14 charts and PowerPoint, we lose focus on the fact that this  
15 adversarial system that we have in this country is the best  
16 thing going on.

17 And it has produced changes in my life, Judge  
18 Korman's life, the juror's lives, the prosecutor's lives, that  
19 have been phenomenal that has come through this system. And it  
20 hasn't been about charts and gimmicks. It's been about finding  
21 the truth and indeed, of course, (indiscernible) by a  
22 courageous jury.

23 So ask your question -- ask yourself, remember Maria  
24 was asked the question and she said, "Well, I was tired." That  
25 was after the conversation with Lieutenant. Martinez supposedly

1 raping her, so why did you mention my name on Facebook. She  
2 first said she was tired. But as to that, the government asked  
3 her a follow-up question. It's in the transcripts. They said,  
4 when you said tired, what did you mean by that?

5 And she said, I was trying of everything that was  
6 done to me. So the question could be asked when the people  
7 want it to be asked. The follow-up question was asked but no  
8 follow-up question was asked when Kiara Maldonado, who is on a  
9 supervised release, who could end up back in jail, said she was  
10 pursuing him. Just like no showing of the Plan B box, just  
11 like not asking the C.Os about their observations of Maria,  
12 that question was never asked because the answer would not  
13 support Maria's story and it would create reasonable doubt with  
14 respect to all of these counts as to what happened because she  
15 is the only person who is telling you what happened. Everybody  
16 else is just feeding off of what she said to them or what they  
17 observed.

18 Melva Vasquez said she was angry when she found out  
19 about the claim of rape of forced sex. Why? She was asked on  
20 cross-examination. She said because of the conduct of both  
21 Lieutenant. Martinez and Maria. What?

22 Again, I don't have a burden of proof in this case  
23 but I ask you a question, that critical question, forget about  
24 what Maria said, somebody should have got up and said what did  
25 you mean by that. What do you mean what she did? What conduct

1 are you talking about?

2           The question was never asked in a rape case. Why?  
3 You'll find that five of the counts in question, the answer --  
4 in this case, the answer to that wouldn't even matter if you  
5 found the events happened. Who started and who didn't, but to  
6 15 counts where they have to prove force and rape, that's a  
7 critical question that was not answered. And just like the  
8 other question, it wasn't answered because it would create  
9 reasonable doubt with respect to the counts.

10           I have about 15 minutes left, Judge.

11           Remember the kissing and Noel? Noel Lopez? After  
12 she was being repeatedly raped against her will, Maria stated  
13 that in order to get that little bastard to stop, she figured  
14 that she would have somebody kiss her during the visit, that  
15 would cause him to stop raping her. Don't sound to effective  
16 to me but that's the story she told.

17           So she picked her handsome friend, nice looking guy,  
18 came in, who by the way no longer speaks to her, and no longer  
19 is a Facebook buddy or something, cut off, came to the jail to  
20 visit but to make sure to kiss me on the mouth and this way,  
21 according to the testimony for rape to stop. I tell you,  
22 ladies and gentlemen, I submit to you as grownups, that the  
23 kiss on the mouth was to get him jealous. And it worked. If  
24 the conversation that took place happened which took place -- I  
25 said if it took place. I am not saying it did or it didn't.



1 You have to decide that.

2 Now let's look to Facebook. The next step that she  
3 says she took -- now let me get this straight. She selects a  
4 very attractive female friend, a Ms. Vargas, whose first name -  
5 - I'm usually very good with names, Larihelys Vargas, she  
6 didn't pick the kissing lover, who by the way is a computer  
7 expert to contact Lieutenant. Martinez and say yo, what's up.  
8 Nuh-huh. She wasn't interested in that. She told her, oh, I  
9 just wanted his name to be said. That's the rap. That's the  
10 rub. That's the story on it. She didn't pick him. She picked  
11 Larihelys, beautiful, Ms. Vargas, to contact Martinez, not to  
12 back him down but to find out third-party information about  
13 him. You know, the information that the government said that  
14 he gave to her.

15 She went on Facebook to find out third-party  
16 information about him. The plan was orchestrated by who?  
17 Maria. She tells Vargas to delete my pictures from Facebook,  
18 delete me off of Facebook, so that Lieutenant. Martinez won't  
19 know where it's coming from.

20 Why don't we do it now? If we are just trying to get  
21 him to back off, don't we want to know where he is coming from?  
22 Maybe, maybe not but you certainly are not telling me to delete  
23 me first.

24 Then find out if he's married or search for him with  
25 pictures. Now try as she might, her friend tried to lied for

1 her, Ms. Vargas. Because there it is right there in Facebook.  
2 The question was asked, Are you married? Now why in the world  
3 would a woman who was being repeatedly raped by him want to  
4 know if he's married or if he has pictures with other women?  
5 Why?

6 She knows she gets in trouble for making that call,  
7 even without having that information. Why was his name given a  
8 code backwards? Officer Rodriguez said he had to figure out  
9 what was going on and he was a law (indiscernible) about it.  
10 They wanted to chastize him but he figured it out. And he  
11 confronted her.

12 Now we're all adults here. We're not drug dealers.  
13 We're not slick from the street, you could tell us anything to  
14 get us to go along with you. A rape victim is hardly  
15 interested in whether or not the person who is repeatedly  
16 violating her is married or whether he has other women. And  
17 then asking for a description of them over the phone. No, sir.

18 That used to be something that people used to call  
19 common sense that we're losing with each passing year. Her  
20 excuse now on for her latest fabrication, rape, is that she  
21 knew that if he listened to the calls and found out that he  
22 would be talking about her, he would stop raping her. So they  
23 want to talk in code. Why say believe me. Why no follow-up  
24 conversation? That's nonsense. She spoke to Agent Vargas  
25 according to the SIS -- Rodriguez in coded manner to hide who

1 she was really talking about. But she needed to give enough  
2 information so the contact would be made. Maria wanted  
3 information and she got it. And once she got that information  
4 that he was married, and he had pictures with other women, no  
5 more sex. Right?

6 She said no more sex except for the last weekend  
7 before she left. So then ten times plus that she was talking  
8 about, didn't happen between February 6th or 7th and the date  
9 of Facebook and the last weekend was April 23rd, 22nd, 2016.

10 She agreed with me that there was no reason for her to  
11 be trying to find out personal information about the little  
12 bastard. She said yes, based upon her story that she was  
13 doing. And in order to make her story sell, she told you about  
14 what Officer Rodriguez said to her, to make her story sell, she  
15 told you jurors that when Officer Rodriguez asked her, "Do you  
16 like this guy," because that's what the call sounded like to  
17 him, she said no. But in describing him, she said he's a pig,  
18 he's a pig.

19 Officer Rodriguez didn't say what do you mean by  
20 that. He said it never happened. The (indiscernible). Think  
21 he's throwing his career away or do you think it's a true  
22 (indiscernible).

23 How about this? He tried to convince each and every  
24 one of you that Officer Rodriguez said the following: "If you  
25 promise me to keep your mouth shut and don't tell anybody about

1 this, I will tear up the paperwork and everything will be okay  
2 and you won't be in trouble." Now that conversation took place  
3 in Spanish. So we're talking about why I don't understand your  
4 words. How come they didn't ask Officer Rodriguez about that?

5 Why didn't they ask him did that happen? Why?  
6 that's not an important question? That's a misleading  
7 question? That's a valid question? Did you say that? Answer,  
8 we know the answer, he said no. One thing Maria didn't know  
9 because she told you in her testimony, he would cover up for  
10 Lieutenant. Martinez and the government said it this morning.  
11 They got it. That's what they said.

12 But he reported it that day. The officer -- the  
13 supervisor, the person who is responsible for investigating  
14 staff. Maria doesn't know that, it was already reported, at  
15 least she wasn't supposed to know that it was already reported.

16 Maria also told you that SIS Officer Rodriguez  
17 informed her that this problem will follow you to immigration  
18 and you're going to have a problem with immigration. Ask him,  
19 did you say anything about this? He said I never mentioned  
20 immigration to her.

21 They didn't ask -- the government didn't ask Officer  
22 Rodriguez anything about that. Why not? Because it doesn't  
23 support Maria's story and it creates reasonable doubt.

24 Now I'm almost there, I'm almost done. But what is  
25 more sinister and alarming to this case, is that you find out

1 that Officer Rodriguez never said to her keep your mouth shut  
2 and I'll take care of you. Remember when I asked Officer  
3 Martinez to look over at the jurors? I know you respect your  
4 man, your workers, but look at the jurors, they have an  
5 important decision to make. Would you turn your back on the  
6 person that you thought was in trouble with rape to help a  
7 fellow officer, somebody you worked with, even if you're be  
8 calling rat, would you do it? He looked you all in the face  
9 and he said he would not (indiscernible). Did you believe him?  
10 Or do you believe that Maria was telling you the truth and  
11 that's the reason why the government didn't bother asking her  
12 because they didn't have to since she was telling the truth.

13 Look, you could take all the pictures of SHU that you  
14 want, a place where the person never was and avoid these  
15 critical questions but in a trial, they're going to be ready,  
16 to make sure they're raised by someone. All right.

17 The other thing I wanted to say and I will wrap here,  
18 promise you, was that remember the question about being tired?  
19 Remember how tired and that's why I did this? When I got up on  
20 cross, I asked her, wait a second, did you tell these agents  
21 when you met with them and the prosecutors, about this  
22 conversation, about being tired? Was the response that you  
23 told that Lieutenant. Martinez didn't let you call your mother  
24 when she was sick and that he was tired of the way he was  
25 treating you? She said well yeah. What? What are we talking

1 about? What phone call to her mother? What are you going to  
2 find out about this phone call? Because it's information that  
3 is different from what the prosecutor brought forward, their  
4 choice. It's the same subject. It's just more of the answer.

5 What phone call? When did it happen? During one of  
6 the rapes? In the 18th Century, there was a famous satirist  
7 and writer, who only educators here on the jury will remember,  
8 his name was Thomas Carlyle and he once penned a phrase that  
9 says, "No lie can live forever."

10 For people who are not teachers, younger people, they  
11 know that the great Dr. Martin Luther King resurrected that  
12 phrase in a very famous speech that he gave in Alabama in 1965,  
13 which how long a speech, and he asked rhetorically, "How long  
14 can injustice go on? How long?" And in that speech, Dr. King  
15 resurrected Thomas Carlyle, gave him credit and Dr. King said,  
16 "No lie can live forever."

17 The story of deception and lies sound good and they  
18 resonate to our hearts. We believe in them. We want to  
19 believe in them. They're self-serving until confronted with  
20 questions and people who have the courage to ask questions.

21 To give you pause to think about what you're going to  
22 do, they're not complicated questions, they're simple  
23 questions. You remember Ms. Vargas said, well, I can't  
24 remember why I called her but I do remember that he had  
25 pictures of men. Okay.

Defendant's Summations - Ricco

1038

1           Lastly, a lawyer was called, a little over. I'm sure  
2 he is making noise back there. Okay. I'm a little over than I  
3 thought I was going to be but I am -- a lawyer was called. His  
4 name was Matt Kluger. He was subpoenaed and it was an unusual  
5 step to call a person's prior lawyer because in our system,  
6 people have the right to confidentiality.

7           So no questions were asked of his conversations.  
8 What you found is that Matt Kluger is a highly experienced and  
9 effective, a complete and ethical professional. You could see  
10 he was uncomfortable testifying because I submit to you that no  
11 lawyer wants to testify in a proceeding when a former client is  
12 involved. He was uncomfortable but like SIS Officer Rodriguez,  
13 Smith and Metzger, ultimately ethical, responsible, and always  
14 truthful before the Court. And understands the importance of  
15 being truthful towards the Court.

16           Kluger brought in no material. He told you about the  
17 truth of the safety valve session at sentencing. He also told  
18 you how important it is for a lawyer to be truthful in all  
19 tribunals in which the lawyer appears, represents a person in  
20 jeopardy, makes a statement and swear to facts on behalf of the  
21 client.

22           The story of the forcible rape, Maria came before you  
23 with a sophisticated lie. It may have some truth to it but  
24 what? What? All good lies got some truth to it, right?  
25 That's not a concession, that a fact. That doesn't change the

1 burden of proof. They still got to prove their case. But the  
2 asylum petition plays it out. Maria tells you that she was  
3 being forced into the drug business by this guy that she owes  
4 almost a half a million dollars in drug debts and she said, "I  
5 didn't tell my lawyer because he, in the transcripts, was  
6 making threatening calls to my criminal defense lawyer and so  
7 since he was making threatening calls to my lawyer, I decided  
8 I'm going to settle the case and keep my mouth shut."

9 She also tells you that she don't want to get  
10 pregnant because of her husband but forget that when she got  
11 arrested, she told the law enforcement that her boyfriend is  
12 some dude named Jose Diaz who is serving seven years in jail  
13 for selling drugs. Is she really married? Any proof of it?  
14 Does she really have a boyfriend named Jose Diaz serving seven  
15 years in jail for drugs? Why did she make up a factitious Jose  
16 Diaz?

17 What you will find, what you found out from Matthew  
18 Kluger is that ethical lawyers, from an ethical lawyer, that he  
19 had no conversation with anyone related to her case other than  
20 her friend Ramon, who she testified to here was her friend, who  
21 is described in the sentencing proceeding that you heard  
22 questions about, that he got no telephone calls with anyone  
23 about the case.

24 Matthew Kluger told you that under oath with his  
25 professional license and career on the line in front of this



1 Court, to give his sworn testimony, that no phone calls came to  
2 his office period, end of story.

3 What does that mean? What does that mean to you?  
4 What does that mean to you? Are you mad because he was called  
5 and asked you that question? Did you find it a trick or is it  
6 a trick in not calling? Would you want to know? I submit to  
7 you and that's at page 910 and 911 of the transcript, I could  
8 put the PowerPoint up, too but what's the point? You'll get  
9 the transcript.

10 I submit to you that the asylum application of being  
11 forced into the drug trade through threats and violence is just  
12 as much a fabrication as the story of being forced and  
13 threatened into sex by Lieutenant. Martinez. There's a pattern  
14 and she gets people on board. She told even her lawyer, swore  
15 to those allegations that she made, that Matt Kluger said that  
16 nobody got in touch with him, nobody ever asked to find him,  
17 but the petition says all of the stuff I said from before  
18 that's not true. Based upon a conversation with who?

19 This is serious business here. Matthew Kluger is not  
20 a slick lawyer. He wouldn't be a part of it, of a faked asylum  
21 application because he would have had to verify that  
22 information and there was nothing about his experience that  
23 would allow him to verify that.

24 See, the agency is not just going to rely upon a  
25 person who is being deported. They want somebody to verify

1 this stuff. And in some of these proceedings, judges and  
2 juries really do depend on the lawyers to be forthright and  
3 candid, as much as they can.

4 Matthew Kluger, I submit to you, had no information  
5 whatsoever, threats, and that's why they had to get another  
6 lawyer to do that asylum application.

7 Remember? He said I met with her after probation.  
8 She said in her testimony, oh, you don't meet with the lawyers  
9 after you're sentenced. That's not what he said. He said he  
10 met with her.

11 All right. There are seven counts in the indictment  
12 and I'm going to close my book because I promised I would. I  
13 want you to take a concept back with you, each of you, whether  
14 you're (indiscernible). The concept is called justice and the  
15 way we reach justice, it's like watching that PBS that put me  
16 to sleep last night. How do we undo injustice? How do we get  
17 to a place where we've built up this power house, this mega  
18 thing of charts and exhibits and computer screens and  
19 PowerPoints, how do we get there? Simple thing. Ask a few  
20 questions.

21 Now, Judge Korman is going to instruct you on the  
22 law, reasonable doubt, what it means. He is going to tell you  
23 how to decide the case. He's going to tell you about the  
24 evidence, the lack of evidence. You ever think about the  
25 critical questions that were not raised here. Now I am sitting

1 down. I'm not leaving anything out. I don't want anybody  
2 coming over here and saying, well Mr. Ricco didn't tell you  
3 about this or he must be worried about that. And he didn't say  
4 I could go on just like the government did for two days about  
5 this case. That's not why I am up here.

6 I am up here to do one thing, it's to bring you back  
7 to the center as to where you should be. Bring you back at  
8 that place where reasonable doubt means what it means and  
9 presumption of innocence, it means what it does. In your  
10 heart, you got to feel that. If you don't feel it in your  
11 heart, if you don't feel it in your heart that Lieutenant.  
12 Martinez as he sits here this morning, is a person presumed to  
13 be innocent and is entitled to every ounce of your attention,  
14 then we fail.

15 So my goal was to remind you of that, to point out  
16 some of the incidents of inconsistent. I can go on and on.  
17 Nobody got six months for a button being missing, like Maria  
18 said. She got six months for sexual misconduct in a room after  
19 a hearing. We could go on and on. Why did she tell you it was  
20 for a button? Because she wanted you think that somehow the  
21 Bureau of Prisons is harsh and doesn't treat people fairly.

22 Nobody likes the idea that a person be placed in the  
23 SHU in a cell, but it beats being raped.

24 Another very important point that the government is  
25 right over and it's in the transcripts. When she went to the

1 counselor, and the counselor told her, well you can take  
2 another job but you have to work at night. It's in the  
3 transcript. I don't want to work at night. So you pick rape  
4 over working at night.

5           They start running away with the SHU story. They  
6 forget about what the witness actually said. So my job is to  
7 remind you that everything that was said there was said under  
8 oath and it's that their duty and their obligation to prove  
9 this case up beyond a reasonable doubt and when I sit down,  
10 they get to come up here one more time. And I'm not chiding  
11 you. It's an awesome responsibility. They get to pick what  
12 they want to do. I don't pick the questions they ask. They  
13 pick their own, just like I pick my own but I pick questions  
14 that I think explores the issue to get you to think about  
15 common sense and experience and apply your common sense and  
16 experience to what you are asked to believe.

17           I'm not saying she told the truth this time, lied  
18 this time. Nuh-huh. When you put it all together here, it's  
19 not evidence upon which you as responsible adult, can come back  
20 and say reliable evidence established these forcible counts  
21 beyond a reasonable doubt and the counts that did not require  
22 proof beyond a reasonable doubt because ultimately, you're  
23 still relying upon the same witness that has a history of doing  
24 what according to her, lying. Thank you.

25           Thank you very much, your Honor.

Defendant's Summation/Government's Rebuttal

1044

1 THE COURT: Ladies and gentlemen, what would you like  
2 to do? We could hear the rebuttal summation now and you could  
3 then go to lunch or you can go to lunch and then we'll hear the  
4 rebuttal summation. You don't have to be unanimous.

5 You want to go ahead?

6 MR. RICCO: I'm sorry. Sorry about that.

7 THE COURT: So I'm going to ahead with the rebuttal  
8 summation.

9 THE CLERK: They would like to hear the rebuttal,  
10 Judge.

11 THE COURT: Okay.

12 MS. SHIHATA: Can I just have one minute, your Honor?

13 (Pause)

14 GOVERNMENT'S REBUTTAL

15 MS. SHIHATA: Defense counsel and I can agree on one  
16 thing, this case is not about charts. It's also not a story of  
17 deception and lies. He said stories of deception and lies  
18 sound good.

19 Did any of Maria's testimony over three days, did any  
20 of that sound good to you? She went over, in excruciating  
21 detail, what happened to her. She relived that experience, the  
22 worst experience of her life. She was on direct examination  
23 over two days. Were any of you thinking, I wish Ms. Shihata  
24 would ask her another question, as she was going through that  
25 in detail?

Government's Rebuttal - Shihata

1045

1           This case is about the evidence. We're not afraid of  
2 the evidence. We want you to look at it. We want you to look  
3 at it. We want you to ask for it. You have that right. Ask  
4 for it.

5           Your task is to evaluate that evidence and decide  
6 whether the defendant is guilty of the charged crimes. Nothing  
7 more, nothing less.

8           And as the judge will instruct you, the evidence is  
9 not the arguments made by defense counsel, or me, or Ms.  
10 Argentieri, it's not the questions the lawyers ask, or the  
11 questions they didn't ask. It's not the objections that we  
12 made.

13           It's the testimony you heard from the witnesses,  
14 Maria, Danilda, Melva, Kiara, and all the others. It's the  
15 exhibits that were entered into evidence, the Rite Aid records,  
16 the USAA bank records, the Bureau of Prisons records, the  
17 vasectomy medical records, the phone records, the Facebook  
18 records, the Google records.

19           We don't have a chart because we're fancy. We have a  
20 chart because it's complicated. We have to put it all together  
21 for you. There's a lot of documents. We want to make sure you  
22 understand them, but we're giving you a chart, and we're giving  
23 you all the documents. And you can check it all for yourself.

24           Now, the defense has no burden. The burden of proof  
25 rests solely with the government. And we welcome that burden.

Government's Rebuttal - Shihata

1046

1 But that doesn't mean you have to accept defense arguments and  
2 speculation and innuendo without question. It's your job, and  
3 it's your duty to evaluate those arguments against the  
4 evidence.

5 So, let's think about that. Defense counsel spent a  
6 lot of time telling you that Maria is a manipulator, an  
7 opportunist, she's scheming this whole thing out to get -- to  
8 stay in the country, get money, who knows what else. Think  
9 about that.

10 She had this all planned out. Think about what that  
11 has to mean. First, it has to mean Maria was sitting in  
12 immigration custody waiting, and waiting patiently for some  
13 unknown agents and federal prosecutors to start an  
14 investigation involving the MDC, long after she left it, and  
15 miraculously find her and decide to meet with her. Because  
16 remember that both Maria and Special Agent Riley told you that  
17 the agents found Maria. Not the other way around. She didn't  
18 reach out to them, they found her.

19 And you heard from both Agent Riley and Maria, that  
20 when the first time these federal agents show up to talk to  
21 her, she doesn't know what it's about. She's scared. She's  
22 nervous. She's reluctant to speak to them. And all of that  
23 makes sense. She's sitting in immigration custody.

24 She's had this horrible experience at the MDC, being  
25 raped multiple times by a law enforcement officer. And agents

Government's Rebuttal - Shihata

1047

1 show up to speak to her. She's scared. That's normal. She  
2 doesn't know what it's about.

3 But okay, let's put that to one side. You know what  
4 else you have to believe for this defense theory to play out?

5 You also have to believe that when those agents found  
6 her, miraculously, her master plan was to apparently tell them  
7 to go away, play hard to get, and not tell them anything that  
8 first meeting in December 2017. I guess part of the master  
9 plan must have been hoping and praying that the agents would be  
10 persistent and want to meet with her again.

11 Ladies and gentlemen, you and I met in this courtroom  
12 a week and a half ago, but you all live in the real world.  
13 Does that make any sense to you? That's not a plan.

14 Now, defense counsel also talked to you about the  
15 evidence, but didn't show it to you at a certain point. And so  
16 I'm going to show it to you.

17 I want to show you Government Exhibit 241, because I  
18 think Mr. Ricco started with how, if you look at this exhibit,  
19 map of December, December 2015, January 2016, February 2016,  
20 this is the map of the dates that Lt. Martinez had a shift as  
21 east activities lieutenant, and he claimed that if you look at  
22 this map, this calendar, you won't find that there are 10 days  
23 between December 13th, 2015, and February 7th, 2016, where he  
24 was even east activities lieutenant. That Maria said she must  
25 have been raped at least 10 times, but that's impossible.



Government's Rebuttal - Shihata

1048

1 Well, let's look at it. Here we go. Here's December  
2 13th, 2015. That's the -- here's December 13th, 2015. That's  
3 the date that you know is the first incident, the first oral  
4 and then vaginal rape that Ms. Argentieri described for you.

5 I'm not even going to count the 14th. That's the day  
6 -- the night that she gave him -- that he gave her the Plan B  
7 pill. Okay? He's not on -- he's not east activities  
8 lieutenant for the rest of that week, or the following week.

9 Remember, she told you when he raped her, it happened  
10 on Fridays, Saturday's, and Sundays. So I'm not even going to  
11 count any other days. Here we go. One, Sunday the 27th, two -  
12 - I'm not counting that. Sorry. One, okay? Skipping the  
13 others, let's go to January. Two, three, four, not counting  
14 these, five, six, seven, not counting these, eight, nine, not  
15 counting these, 10, 11, not counting these too, 12. And then  
16 the call on February 7th.

17 We want you to look at the evidence. Now, let's also  
18 talk about the argument that Maria got all this personal  
19 information about Lt. Martinez by asking her friend, Larihelys,  
20 to go on his Facebook page. That's how she knows these things.  
21 Well, take a look at those Facebook records. Ask to see them  
22 back there.

23 And I think what you'll see is there is nothing on  
24 that Facebook record that says the email address,  
25 [Carlos.rich.martinez@gmail.com](mailto:Carlos.rich.martinez@gmail.com). You'll see, there's another

1 email address on here, Cmartinez, or something like  
2 Cmartinez1C, or something like that, at aol.com. Not the Gmail  
3 one. How would she know that?

4 And you know that's his email address because you saw  
5 the Google records, yesterday in evidence, and during the  
6 summation.

7 Also, this whole idea that this Facebook call, that  
8 she was conniving, and manipulating, and speaking in code, what  
9 is the actual testimony about that? Including from Officer  
10 Rodriguez, who you know Mr. Ricco spent a lot of time saying,  
11 you should look at what he said and take it at face value.

12 Well, let's put that on the ELMO. This is the  
13 transcript at page 480. He's talking about the call. And  
14 here's Tomas Rodriguez answering the question.

15 "She started spelling the last name,  
16 Martinez, first name Carlos, and an initial that  
17 I don't remember."

18 Question, "Did that catch your attention?"

19 "Yes."

20 Question, "Did she spell all the letters in a  
21 row?"

22 Answer, "Yes."

23 That's quite a code, ladies and gentlemen. Spelling  
24 somebody's name.

25 And I want to address this argument about how Maria

Government's Rebuttal - Shihata

1050

1 didn't report this to anyone. First, we know she did report  
2 what happened to her. She reported it to the people she was  
3 closest with, the other people that she was close to at the  
4 jail. She didn't report it to prison officials.

5 Now, defense counsel argued that there were all these  
6 people there that she could have reported it to. And they are  
7 trained, trained people to detect the signs of abuse and rape.  
8 And he spent a lot of time on Officer Smith when he was making  
9 that argument.

10 Well, Officer Smith in line with what Maria told you,  
11 told you that he escorted Maria down to clean for Lt. Martinez  
12 about three times. And she said that too, about three or four  
13 times. And you know what backs that up? The records.

14 Those three dates that we went over in that time  
15 period when both Officer Smith served as the internal officer  
16 the same shift as Martinez served as the east activities  
17 lieutenant.

18 But you know what else Officer Smith told you? That  
19 basically that elevator ride back after bringing her down and  
20 taking her back, remember what he said? Two minutes. Two  
21 minutes. He's supposed to be able to spot what's going on in  
22 that two minutes? Is that what he's paying attention to? Or  
23 is he just bringing an inmate back from cleaning?

24 And by the way, yeah, there's training at the MDC  
25 about PREA. That training is so good, ladies and gentlemen,

Government's Rebuttal - Shihata

1051

1 that Officer Smith couldn't remember what the R in Prison Rape  
2 Elimination Act stood for. Lt. Metzger couldn't remember what  
3 PREA stood for at all. And they were nervous. They're doing  
4 the best they can. But I would suggest to you that maybe  
5 there's a problem with how things are working.

6 And the thing about the SHU, and the pictures we  
7 showed you, and the fact that she had never been there, she  
8 didn't have to go there to know what the SHU looked like.  
9 Melva Vasquez, her friend, had been there. And not for six  
10 months. She never said it was six months. Nobody said it was  
11 six months.

12 Look at the testimony and what Melva Vasquez actually  
13 said, which comports with the records from the BOP. She said  
14 something happened during a visit and that it was sexual or  
15 whatever. It was her word against the guard, the guards, who  
16 said she did it. She went to the SHU for about a week and a  
17 half. And that's what the records show.

18 What she lost for six months was her visiting  
19 privileges. And you know why that's important, because that  
20 places in time the date of the first rape.

21 But it doesn't matter that Maria never went to the  
22 SHU. As a prisoner at the MDC, she knew what it looked like  
23 and she described it for you. And you know what? It's pretty  
24 accurate. And so when she had Lt. Martinez telling her, don't  
25 tell anyone or you're going to go to the SHU, she has that in

Government's Rebuttal - Shihata

1052

1 her mind. That is placing her in fear, ladies and gentlemen.

2 And on this subject of officers, you know, getting  
3 information and reporting it right away, I guess we're supposed  
4 to believe this MDC is a well-oiled machine. Everybody knows  
5 what they're doing. They can spot the signs, they're  
6 detectives. That's not their first -- you know, their only job  
7 by the way. But anyway, let's believe that. Okay?

8 Then explain why didn't Officer Rodriguez say  
9 anything to his supervisor, Tim Geier, about his suspicions?  
10 And it wasn't just he thought she liked him. That's not what  
11 the testimony says.

12 This is page 516 of the transcript. Tomas Rodriguez  
13 was asked,

14 "Okay, you were asked a lot about the phone call  
15 and what you reported to Geier, and what you  
16 thought."

17 Answer, "Yes."

18 Question, "And you testified on direct that you  
19 felt Maria wasn't being fully honest with you?"

20 Answer, "Correct."

21 Question, "And what you thought -- and that you  
22 thought there was more to the story."

23 Answer, "Correct."

24 Question, "Did you share those suspicions with  
25 Geier?"

Government's Rebuttal - Shihata

1053

1 Answer, "No."

2 Question, "In fact, at the time, you suspected  
3 that Maria and Martinez had some type of  
4 inappropriate relationship."

5 Answer, "Yes."

6 Question, "Did you tell that to Geier?"

7 Answer, "No. Uhn-uh."

8 Question, "Did Geier speak Spanish?"

9 Answer, "No."

10 Question, "What language was the call between  
11 Maria and her friend in?"

12 Answer, "Spanish."

13 Question, "Did you save that call?"

14 Answer, "No."

15 Does that sound like reporting what happened, to you?

16 In fact, you know that those calls are recorded and then  
17 written over. They don't last forever. So not saving it makes  
18 it disappear.

19 Let's talk about the Plan B pill. Go back and look  
20 at the testimony. During her testimony, Maria called it the  
21 Morning After pill. Of course she knows, she now knows, it's  
22 the Plan B pill. Of course she does. Why? Because that  
23 defendant brought it for her.

24 And Kiara Maldonado testified on cross about this.

25 And I think what you'll see is that she indicated that the way

Government's Rebuttal - Shihata

1054

1 Maria referred to the Plan B pill to her in Spanish was to use  
2 the term, la pastilla.

3 Let's look at the transcript. This is page 643.

4 Question, this is Mr. Ricco asking the questions  
5 here. Question, "She told you it was the Plan B  
6 pill, right?"

7 Answer, "Right."

8 "And you know what a Plan B pill is, right?"

9 "Yes."

10 Question, "And when she said to you, it was a  
11 Plan B pill, did she say it to you in broken -- in a  
12 broken English, or did she say Plan B in Spanish?"

13 "Plan B in Spanish."

14 And now you know what she really meant by that, by  
15 the way.

16 Next page, question, "How do you say Plan B in  
17 Spanish?"

18 Answer, "La pastilla, the pill. It's not like the --  
19 "

20 And then she gets cut off. "How do you say the word  
21 plan in Spanish?"

22 I submit to you, he's not getting the answer he  
23 wanted there.

24 And then it goes into a discussion about McDonald's  
25 and how -- and, you know, brand names. But look at this, in

Government's Rebuttal - Shihata

1055

1 the beginning she thinks she told you it was a Plan B pill.  
2 She's thinking of Plan B generically. Like, yeah, that it was  
3 a morning after pill.

4 When it becomes clear to her that through these  
5 questions, a suggestion is trying to be made that she used the  
6 word, Plan B in particular, she says, " la pastilla, the pill.  
7 It's not like the -- you don't say it like that, like -- " cut  
8 off with a question.

9 Let's talk about Noel Lopez. By the way, Noel Lopez  
10 corroborates what Maria told you. She got a call -- he got a  
11 call from her. She was begging him to come see her. He lives  
12 in Connecticut. She was begging. He came.

13 When he got there, he said she was a little bit happy  
14 first to see him, but then it was clear she wasn't in good  
15 shape. She was desperate. And she -- and he confirms that  
16 Maria asked him to kiss her on the lips. And he did.

17 Now, defense counsel says, that's not because she was  
18 trying to get Carlos Martinez to stop raping her. That's  
19 because she was trying to make him jealous. I don't get that  
20 argument, to be honest with you, if nothing happened between  
21 them. What's she trying to make him jealous of, exactly?

22 But then he also took it a step further and tried to  
23 suggest that Noel Lopez doesn't want anything to do with Maria,  
24 this master manipulator. Again, and that because -- and it's  
25 something to do with her and her character.



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1056

1 Again, let's look at the transcript. This is page  
2 309. I'm sorry, page 310.

3 He says, "At some point you stopped having  
4 contact all together with Maria. Isn't that  
5 correct?"

6 "Yes."

7 Question, "Tell the jury when is the last time  
8 you had contact with Maria."

9 Answer, "About two months ago."

10 First, that doesn't sound like that long ago. But  
11 okay. About two months ago.

12 Answer. Question, "Okay. And you decided to  
13 cut off contact? Or did she decide to cut off  
14 contact?"

15 Answer, "I wasn't trying to get in touch with  
16 her anymore."

17 Question, "Why?"

18 "Because this is, for me, being a friend. This  
19 is why I'm here today, because I was trying to be a  
20 friend and this is leading me into this."

21 You know exactly what he's talking about there. He's  
22 talking about having to testify at this trial. That being a  
23 friend to her got him in this mess where he now has to testify  
24 at a federal trial about kissing a woman on the lips that  
25 wasn't his wife.

Government's Rebuttal - Shihata

1057

1 Defense counsel also suggests to you that Dayiberto  
2 Torres is a figment of Maria's imagination, that you can't  
3 trust her because she didn't tell the full truth in her safety  
4 valve. Well, just remember, who told you all that? Who told  
5 you all that? Maria, in like the first 20 minutes of her  
6 direct examination when she was on the stand. She told you  
7 that. She was testifying in court.

8 And that's why, when Mr. Kluger testified, he didn't  
9 really tell you anything new. He told you what Maria told you,  
10 which was what a safety valve proffer is, how you need to be  
11 truthful in it. She told you that. And she's the one that  
12 told you she wasn't truthful, fully truthful in that. And she  
13 also told you why.

14 She left out, she told you she left out Dioberto  
15 Torres' name, and the threats, and the number of times she had  
16 picked up drugs for him. And I think the suggestion here is  
17 that she left those things out because otherwise she wouldn't  
18 be able to get the safety valve.

19 But actually, you know from Mr. Kluger, that that's  
20 not the case. He told you what the conditions for safety valve  
21 are. That you tell the truth (indiscernible), that you have no  
22 prior criminal convictions, which by the way, you know Maria  
23 does not have.

24 She testified that she had never been arrested before  
25 the arrest that landed her at the MDC. And that you haven't

Government's Rebuttal - Shihata

1058

1 used a gun to commit your crimes, or violence, the person in  
2 the safety valve.

3 There's no evidence in this case that she was a  
4 violent person, or that she used a gun in committing her crime.  
5 So she met all those conditions. And she, I submit, could have  
6 helped -- told the agents and prosecutors about Dioberto  
7 Torres, and still gotten safety valve. That's not why she left  
8 those things out.

9 She left those things out because she is terrified of  
10 Dioberto Torres. She left those things out because she thought  
11 if she told federal agents, law enforcement agents and  
12 prosecutors, his name, that they -- that he would find out.

13 And she wasn't going to put her family in danger  
14 again. She already felt responsible for that fire that killed  
15 her brother and badly burned many members of her family.

16 And by the way, you saw how scared she was when she  
17 took that witness stand, and you saw her reaction when defense  
18 counsel had used Dioberto Torres's full name.

19 This is at page 242 -- sorry, 272 of the transcript.

20 Question, "You didn't tell the judge anything  
21 about Dioberto Torres, did you? That's a question."

22 Answer, "And why do you have to say that whole  
23 name?"

24 Question, "What's the answer to the question?"

25 Answer, and remember what she looked like when she

1 was saying this.

2 Answer, "But why do you have to say --"

3 Question, "Did you tell Judge Swain anything  
4 about Dayiberto Torres? Yes or no?"

5 Answer, "No."

6 "Nor did you ever tell Judge Swain that you were  
7 working off a \$300,000 debt to Dioberto Torres.  
8 Isn't that correct?"

9 Answer, "If something happens to my family from  
10 today on, you're the one who will be to blame for  
11 mentioning that complete name here."

12 She was terrified.

13 Defense counsel also said something about how Mr.  
14 Kluger's testimony means that Maria was lying about Torres or  
15 his people calling her lawyer. Let's look at the transcript  
16 again. Page 274, line 17.

17 Question, "Okay. And by the way, you also  
18 wasn't honest with your own lawyer. Isn't that  
19 correct?"

20 Answer, "No, that was my -- we're talking about  
21 my family's life. The other lawyer told me that they  
22 were calling him."

23 The other lawyer told me that they were calling him.

24 Not Mr. Kluger.

25 And this whole thing, you have why the immigration

Government's Rebuttal - Shihata

1060

1 lawyers didn't ask for the file for her criminal case from Mr.  
2 Kluger. They didn't have to ask Mr. Kluger for the file to  
3 know that she lied in the safety valve, didn't tell the whole  
4 truth. Why? Because they had Maria, and she told them.

5 And Mr. Kluger -- she didn't ditch Mr. Kluger. He  
6 didn't ditch her either. Her criminal case was over. She had  
7 been sentenced. These are immigration proceedings. That's a  
8 specialized area of the law. And Mr. Kluger testified, he is  
9 not an immigration lawyer. That's why he didn't represent her  
10 in these proceedings.

11 There's also one more thing I'd like to say. The  
12 other thing that you should think about when you're evaluating  
13 defense counsel's theories, think about what it means.

14 It literally means that the defendant is the  
15 unluckiest man in the world. All those women who took the  
16 witness stand, those former inmates, they're all lying. Every  
17 single one of them, framing the defendant, jamming him up for  
18 crimes he didn't commit.

19 Never mind that most of them didn't want to be here,  
20 that Melva and Kiara are getting absolutely nothing by being on  
21 that witness stand. Never mind that the last place any of them  
22 wants to be again is in federal prison, which lying on that  
23 witness stand could mean for them. Never mind all of that.  
24 Poor Carlos Martinez. He's just so unlucky.

25 But it's not only that, ladies and gentlemen.

Government's Rebuttal - Shihata

1061

1 There's a little more bad luck for the defendant. The day  
2 Maria says that that rape first happened, first one, that same  
3 day Melva Vasquez was finally able to see a visitor after six  
4 months.

5 The very day that Maria says she begged him for that  
6 morning after pill, just hours later, that night at 9:29 p.m.,  
7 it just so happened that the defendant buys a Plan B pill at  
8 Rite Aid. What an unlucky coincidence. Especially, because he  
9 had a vasectomy.

10 And for some reason, he just happens to buy a Plan B  
11 pill using his rewards card and his debit card, which was found  
12 in his wallet at the time of his arrest. He just happens to  
13 use that card to buy that Plan B pill on that exact day.

14 And then, just a few hours after that, when Maria  
15 says the defendant came to her unit after midnight, she's  
16 testified around 12:30 a.m., it just so happens that the  
17 defendant did go to her unit as the records show, at 12:19  
18 a.m., exactly around the time that Maria says he brought her  
19 that Plan B pill folded up in the ID sleeve. That's pretty  
20 unlucky.

21 One final thing on dates. Defense counsel made a big  
22 deal about the April date, and look at her testimony, she said  
23 it happened the weekend before, that last rape happened the  
24 weekend before she went to immigration custody. And he wasn't  
25 working then.

Government's Rebuttal - Shihata

1062

1 But you know what you know from all of the evidence?  
2 You know that Maria doesn't remember dates exactly. You know  
3 that from the date of the very first rape, the December 13th,  
4 2015 date.

5 She told you, when she testified, that she thought  
6 that happened in late November or early December of 2015. But  
7 you know from all the evidence that Ms. Argentieri went  
8 through, that it happened on Sunday, December 13th, 2015  
9 because that was the day that Melva was able to finally get her  
10 visit after six months, and that was the day that he bought the  
11 Plan B pill.

12 So all this about the April calendar, what does it  
13 actually show you? That Maria doesn't have a perfect  
14 recollection of the final date she was raped after having been  
15 raped over, and over, and over again.

16 I'm not even really going to touch, she'd rather be  
17 raped than go to the SHU. Maria was put in an impossible  
18 position. She shouldn't have had to make that choice. You  
19 know that she had no visits.

20 Her lifeline to the outside world was phone calls,  
21 that you don't get when you're in the SHU. And you saw what  
22 that rooms looks like. A person could go crazy in there, if  
23 they're there for months and months.

24 At the end of the day, just like we told you from the  
25 beginning, this is a case about power and abuse. One person

Government's Rebuttal - Shihata

1063

1 had all the power in this setting, in this prison, in the MDC.  
2 The defendant.

3 The other, Maria, was a sentenced prisoner, and she  
4 had none. That power as a lieutenant gave the defendant access  
5 to Maria and the ability to get her alone in the lieutenant's  
6 office, a room with no cameras, at times when the second floor  
7 was empty.

8 That power gave him access to the camera system from  
9 the computer on the desk to rape Maria using force and fear,  
10 and also separate and apart from that, to sexually abuse Maria  
11 without a care in the world that he would get caught.

12 That power allowed him to threaten and scare Maria  
13 into silence, telling her she'd end up in the SHU and get more  
14 jail time. He was a lieutenant. He could get someone put in  
15 the SHU. You know that from Lt. Metzger's testimony yesterday.  
16 More importantly, that's what Maria believed, because that's  
17 what Lt. Martinez told her.

18 And that power made the defendant believe he could  
19 commit these crimes with impunity; that he was above the law.  
20 Why? Because the person he chose as a victim was a convicted  
21 criminal. Who's going to believe her. She's involved in a  
22 drug conspiracy. Who's going to believe her. She's an  
23 immigrant facing deportation.

24 Literally all of the arguments you've heard today,  
25 from defense counsel, that's exactly why the defendant thought



Government's Rebuttal - Shihata

1064

1 he could get away with these crimes. Maria is a convicted  
2 felon. She told you that. No one hid it from you. She was a  
3 sentenced prisoner when the defendant committed these crimes  
4 against her.

5 But she's also a human being. A woman. Someone's  
6 daughter. Someone's sister. She's just -- she's not just an  
7 anonymous prisoner with an inmate number. You saw her take  
8 that witness stand and testify over three days. Three long  
9 days. About some of the worst things that happened to her.

10 It was difficult testimony to listen to. But you  
11 know what? As difficult as it was for all of us to hear, it  
12 was horrible for her to experience, and devastating for her to  
13 relive. You saw how Maria reacted just a few minutes into that  
14 testimony when she was asked to identify the man who raped her  
15 in the courtroom. She couldn't even look at him without having  
16 a physical reaction. It was all too much in that moment.  
17 That's not an act, ladies and gentlemen. You were here for it.  
18 You witnessed that yourself.

19 One final thing I want to point out about the charges  
20 in this case, is that it's not just about force and fear. We  
21 believe we have established that beyond a reasonable doubt.  
22 You're heard it in the testimony. It's backed up by the  
23 evidence.

24 But even if for some reason you were to find that  
25 there was no forcing here, there are charges called sexual

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1065

1 abuse of a ward that Mr. Argentieri argued. And for those  
2 charges, consent is irrelevant. No force or fear is required.

3 And I submit to you that you saw Maria testify about  
4 the details of the charged crime, and that we have in fact  
5 established force, that the defendant used force and fear in  
6 this case. You saw her demeanor, you heard her tell you what  
7 happened, probably in more detail than you wanted to. But it  
8 was important for you, as jurors, to know what happened and to  
9 finally hear Maria's voice.

10 Now it's time for you to hold the defendant  
11 accountable for his conduct, for his actions, for the harm he  
12 caused and the damage he did to Maria, who you know will be  
13 affected by what he did to her for the rest of her life. It's  
14 time to let the defendant know that in our system, no one is  
15 above the law, and everyone is worthy of the law's protection.

16 Being a sentenced prisoner, having made mistakes in  
17 your life, doesn't mean you can't be the victim of a crime. It  
18 doesn't mean you can't be the victim of a rape. And it doesn't  
19 mean that your truth is not believable.

20 You know what happened because Maria told you what  
21 happened. All the other evidence backs her up. Find the  
22 defendant guilty because that's what the evidence and justice  
23 demands. Thank you.

24 THE COURT: We'll break for lunch. Break for lunch  
25 until 3:00. Is that enough time? You want an hour?

Government's Rebuttal - Shihata

1066

1 THE CLERK: All rise.

2 (Recess from 2:26 until 3:15 p.m.)

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1 (Jury not present.)

2 THE COURT: Did you want to say something?

3 MS. ARGENTIERI: Oh, I did. I'm sorry.

4 So we agreed this with your clerk, and I know I know  
5 what the answer is going to be about the verdict sheet, but I  
6 looked at it and I think that our --

7 THE COURT: I said in the jury instructions that I  
8 sent you last night that's what I was going to do.

9 MS. ARGENTIERI: Okay. I just -- and actually in  
10 laying --

11 THE COURT: And --

12 MS. ARGENTIERI: I'm sorry.

13 THE COURT: Go ahead.

14 MS. ARGENTIERI: In putting eyes on it I'm easily  
15 confused. I did find it a little confusing because it wasn't  
16 organized by incident and I think that might be how they  
17 deliberate. I don't know how they're going to deliberate. I'm  
18 not going to be back there.

19 THE COURT: I tell them in the instruction they can  
20 deliberate however they want, but --

21 MS. ARGENTIERI: Okay.

22 THE COURT: -- I don't -- if you both object, then  
23 I'll have to reconsider, but I find -- I don't know how to do  
24 it in a way that's not confusing, or that makes sense to me,  
25 because how many -- you know, they do it Count 1, aggravated.

1 Then they go through other counts. And they come back to Count  
2 5. And then they do other counts. And then they come back  
3 Count 9, the same thing.

4 MS. ARGENTIERI: Okay.

5 THE COURT: I don't -- I just found that confusing  
6 myself. So I was just trying to make -- you know, you did not  
7 need 20 counts in this indictment, but you know, August 26th,  
8 1982 was my last day as U.S. Attorney, so --

9 (Counsel confer.)

10 MS. ARGENTIERI: Okay. Mr. Ricco raises a good point  
11 as well. That's fine, Judge.

12 THE COURT: Okay. I didn't hear him, but I take it --  
13 -- I'd be happy -- he whispered it to you, but I'm --

14 MS. ARGENTIERI: It was a (indiscernible).

15 THE COURT: Okay. So let's go.

16 MS. SHIHATA: Thank you, Judge.

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## Jury Charge

1069

1 (Jury enters)

2 THE CLERK: Copies of the charge have been  
3 distributed to the jurors, Judge.

4 JURY CHARGE

5 THE COURT: Okay, ladies and gentlemen. I'm going to  
6 charge you on the law. I have given you each copies because I  
7 think -- I long ago concluded that it was easier for the jury  
8 to follow along with the charge if they could actually read  
9 along with it and you'll also be able to take the charge with  
10 you into the jury room. So I think it will prove helpful to  
11 you there.

12 Now that the evidence in he case has been presented  
13 and the attorneys for the Government and the Defendant have  
14 concluded their closing arguments, it is my responsibility to  
15 instruct you as to the law that governs this case. My  
16 instructions will be in three parts.

17 First, I will instruct you regarding the general  
18 rules that define and govern the duties of a jury in a criminal  
19 case.

20 Second, I will instruct you as to the legal elements  
21 of the crimes charged in the indictment; that is, the specific  
22 elements that the Government must prove beyond a reasonable  
23 doubt to warrant a finding of guilty and third, I will instruct  
24 you as to some general rules regarding your deliberations  
25 following these instructions.

## Jury Charge

1070

1 To begin with, it is your duty to find the facts from  
2 all the evidence in this case. You are the sole judges of the  
3 facts and it is, therefore, for you, and you alone, to pass  
4 upon the weight of the evidence, to resolve such conflicts as  
5 may have appeared in the evidence, and to draw such inferences  
6 as you deem to be reasonable and warranted from the evidence.

7 With respect to any question concerning the facts, it  
8 is your recollection of the evidence that controls. You must  
9 apply the law to the facts as you find them in accordance with  
10 my instructions.

11 While the lawyers may have commented on some of these  
12 rules, you must be guided only by what I instruct you about  
13 them. You must follow all the rules as I explain them to you.  
14 You may not follow some and ignore others.

15 Even if you disagree or don't understand the reasons  
16 for some of the rules, you are bound to follow them.

17 The fact that this prosecution is brought in the name  
18 of the United States Government does not entitle the United  
19 States to any greater consideration than any other party to  
20 this case. By the same token, it is entitled to no less  
21 consideration.

22 All parties, the United States Government and the  
23 defendant, are equal before the court and are entitled to equal  
24 consideration. Neither the government nor the defendant is  
25 entitled to any sympathy or favor.

## Jury Charge

1071

1 I instructed you earlier, that is, in my initial  
2 instructions to you when you -- on the first day of trial -- I  
3 instructed you earlier that the indictment filed against the  
4 defendant is the means by which the government gives notice to  
5 the defendant of the charges against him and brings him before  
6 the court. It is nothing more.

7 The indictment is an accusation and nothing more.  
8 The indictment is not evidence and you are to give it no weight  
9 in arriving at your verdict.

10 The defendant, in response to the indictment, pleaded  
11 not guilty. He is presumed to be innocent until his guilt has  
12 been proven beyond a reasonable doubt and that presumption  
13 alone, unless overcome, is sufficient to acquit him.

14 The defendant is presumed innocent until you, the  
15 jury, decide unanimously that the government has proven him  
16 guilty and proven him guilty beyond a reasonable doubt.

17 Since the law presumes the defendant to be innocent,  
18 the burden of proving his guilt beyond a reasonable doubt is on  
19 the government throughout the trial. A defendant never has the  
20 burden of proving his innocence or of producing any evidence at  
21 all.

22 Proof beyond a reasonable doubt does not mean proof  
23 beyond all doubt. It is not necessary for the government to  
24 prove the guilty of a defendant beyond all possible doubt. The  
25 test is one of reasonable doubt.



## Jury Charge

1072

1           A reasonable doubt is a doubt based upon reason and  
2 common sense, the kind of doubt that would make a reasonable  
3 person hesitate to act.

4           Proof beyond a reasonable doubt must, therefore, be  
5 proof of such a convincing character that a reasonable person  
6 would not hesitate to rely and act upon it in the most  
7 important of his or her own affairs.

8           A reasonable doubt, however, is not a doubt that  
9 arises out of whim or speculation. A reasonable doubt is not  
10 an excuse to avoid the performance of an unpleasant duty.

11           If after a fair and impartial consideration of all  
12 the evidence in the case you can honestly say that you have  
13 such a doubt as would cause prudent persons to hesitate to act  
14 in matters of importance in their lives, then you have a  
15 reasonable doubt and in that event, it is your duty to acquit.

16           If, on the other hand, after a fair and impartial  
17 consideration of all the evidence you can honestly say that you  
18 have such an abiding belief in the guilt of the defendant that  
19 you would be willing to act upon a similarly strong conviction  
20 in important matters in your own lives, then you have no  
21 reasonable doubt, and in that circumstances, you should  
22 convict.

23           I wish to instruct you now as to what is evidence and  
24 how you should consider it.

25           The evidence on which you are to decide what the

## Jury Charge

1073

1 facts are comes in several forms. Sworn testimony of  
2 witnesses, both on direct and cross examination, and regardless  
3 of who called them. Exhibits that have been received by the  
4 court in evidence and facts to which all the lawyers have  
5 agreed or stipulated.

6 In the course of your deliberations you will consider  
7 both direct and circumstantial evidence. Both types of proof  
8 are evidence upon which a jury may rely in deciding the issues  
9 of fact presented.

10 Direct evidence is the evidence or testimony of a  
11 witnesses as to what they heard, saw, or touched; matters that  
12 they know of their knowledge and observation that bear directly  
13 on a factual issue in the case.

14 Direct evidence is evidence, in other words, that  
15 comes directly through a witness' senses. Let me give you a  
16 very simple, but nevertheless concrete, example of direct  
17 evidence. I want you all to watch me.

18 Now, if any one of the 14 of you were called upon to  
19 testify under oath and to state what I did on the 17th of  
20 January, 2018, you would all be able to testify that I raised  
21 my hand. That is direct evidence.

22 Each one of the 14 of you saw it. You learned it  
23 directly through one of your senses. And that is direct  
24 evidence. That is all there is to direct evidence; evidence  
25 learned directly through one of your senses.

## Jury Charge

1074

1           Now circumstantial evidence is a little different.  
2 It consists of proof and circumstances in terms -- on which in  
3 terms of common human experience one may reasonably infer the  
4 ultimate fact sought to be established or the absence of the  
5 ultimate fact.

6           Circumstantial evidence can be relied upon by both  
7 the government and the defense. Such evidence, if believed, is  
8 of no less value than direct evidence.

9           But in either case, whether you are relying on direct  
10 or circumstantial evidence, the essential elements of the  
11 crimes charged must be established by the government beyond a  
12 reasonable doubt.

13           Now let me give you an example of circumstantial  
14 evidence. Again, it is rather simplistic, but it points out  
15 what I am talking about.

16           Let's assume that all of you either listened to the  
17 radio or had the television on this morning and you saw on the  
18 weather reports, and every weather report on every station that  
19 every one of you listened to or watched on every channel was  
20 that it was going to rain. It was going to pour today, January  
21 17th, 2018, particularly in the Downtown Brooklyn area.

22           Let's assume further that when you left your homes it  
23 was very gray. It was very dark, although it was daytime but  
24 it hadn't started to rain yet. You each brought a newspaper on  
25 your way to court and you looked at the weather forecast in the

## Jury Charge

1075

1 newspaper and every newspaper, *The Times*, the *Post*, and if the  
2 *Wall Street Journal* has a weather forecast, even the *Wall*  
3 *Street Journal* said that it as going to rain today.

4           You got here this morning. You got here at 9:30  
5 a.m. It sill wasn't raining yet. Now, as happens during the  
6 course of this trial, spectators started coming in through the  
7 doors here of the courtroom to watch the trial.

8           Everybody that came in had a raincoat on, starting at  
9 about 11:00, and everybody's raincoat was wet, and they were  
10 all shaking water off their raincoat, and they had hats, and  
11 they were shaking water off their hats, and several of them had  
12 umbrellas and they were shaking water off their umbrellas.

13           Now you didn't see outside, but what is the nature  
14 human conclusion based on your experiences in life? It's very  
15 simple. Circumstantial evidence convinces you that it's  
16 raining outside. That is all there is to it. That is all  
17 circumstantial evidence is. It consists of facts and  
18 circumstances from which you may infer other connected facts.

19           The existence of certain circumstantial evidence may  
20 also lead you to infer that other facts do not exist. Some  
21 circumstantial evidence may be susceptible to more than one  
22 inference, perhaps with one inference tending to prove guilt  
23 and the other the absence of guilt.

24           In such a case, in selecting any inference, you must  
25 keep in mind the presumption of innocence and that the

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1 government has the burden of proving the defendant guilty  
2 beyond a reasonable doubt.

3 Certain things are not evidence and are to be  
4 disregarded by you in deciding what the facts are. The  
5 following are not evidence. Arguments or statements by  
6 lawyers, questions put to the witnesses, objections to the  
7 questions or to offered exhibits.

8 In this regard, attorneys have a duty to their  
9 clients to object when they believe evidence should not be  
10 received. You should not be influenced by the objection or my  
11 ruling on it.

12 If the objection was sustained, ignore the question.  
13 If the objection was overruled, treat the answer like any other  
14 answer.

15 Testimony that has been excluded, stricken or that  
16 you have been instructed to disregard is not evidence and must  
17 not -- must be disregarded.

18 Obviously, anything you may have seen or heard  
19 outside the courtroom is not evidence and nothing I have said  
20 or done should be used by you in inferring innocence or guilt.  
21 I have no view of the guilt or innocence of the defendant.

22 And even if I somehow did manage to convey it to you,  
23 it would be your duty to disregard it.

24 Finally, I have allowed one piece of evidence for a  
25 limited purpose. You have heard testimony that the defendant

## Jury Charge

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1 had a consensual sexual relationship with another Metropolitan  
2 Detention Center employee.

3 The parties may argue about the inferences that you -  
4 - or may have argued about the inference that should draw from  
5 this testimony.

6 One inference, however, that you may not draw from  
7 this testimony about a consensual sexual relationship with that  
8 employee is that the defendant would engage in non-consensual  
9 sexual acts with an inmate.

10 Your verdict must be based solely upon the evidence  
11 developed at trial, or lack of evidence. It would be improper  
12 for you to consider, in reaching your decision as to whether  
13 the government sustained its burden of proof, any feelings you  
14 may have about the defendant's race, religion, national origin,  
15 ethnic background, sex or age.

16 All persons are entitled to the presumption of  
17 innocence and the government has the same burden of proof in  
18 all cases.

19 It would be equally improper for you to allow any  
20 feelings you might have about the nature of the crimes charged  
21 to interfere with your decision making process.

22 To repeat, your verdict must be based exclusively  
23 upon the evidence or lack of evidence in the case.

24 Now you are the sole judges of the credibility of the  
25 witnesses and the weight that their testimony deserves. Any

## Jury Charge

1078

1 assumption that a witness will speak the truth may be dispelled  
2 by the appearance and conduct of the witness, by the manner in  
3 which the witness testifies, by the character of the testimony  
4 given, or by evidence contrary to the testimony given.

5           You should carefully scrutinize all the testimony  
6 given, the circumstances under which each witness has testified  
7 and other matter in evidence that tends to indicate whether a  
8 witness is worthy of belief.

9           Consider each witness' intelligence, motive, state of  
10 mind, partisanship in the prosecution or defense of the case  
11 and his or her demeanor while on the stand

12           The testimony of a witness may be discredited or  
13 impeached by showing that he or she previously made statements  
14 that are inconsistent with his or her present testimony.

15           It is your province to determine the credibility, if  
16 any, to be given the testimony of a witness who has been  
17 impeached.

18           If a witness is shown to have testified falsely  
19 concerning any material fact, you have a right to distrust such  
20 witness' testimony in other particulars, and you may reject all  
21 the testimony of that witness or give it such weight as you  
22 think it deserves.

23           You may consider any demonstrated bias, prejudice or  
24 hostility of a witness in determining the weight to be accorded  
25 his or her testimony.

## Jury Charge

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1           The law does not require any party to call as a  
2 witness all persons who may have been present at any time or  
3 place involved in the case, or who may appear to have some  
4 knowledge of the matter in issue, nor does the law require any  
5 party to produce as exhibits all papers and things mentioned  
6 during the course of the trial.

7           There was testimony at trial that attorneys for the  
8 government interviewed witnesses when preparing for trial. You  
9 should not draw any unfavorable inferences from that testimony.

10           To the contrary, the attorneys were obligated to  
11 prepare this as thoroughly as possible and might have been  
12 derelict in the performance of their duties if they failed to  
13 interview witnesses before this trial began and as necessary  
14 throughout the course of the trial.

15           During the trial you have heard testimony from law  
16 enforcement witnesses. The fact that a witness is a member of  
17 law enforcement does not mean that his or her testimony is  
18 entitled to any greater weight by reason of his or her  
19 employment.

20           By the same token, his or her testimony is not  
21 entitled to less consideration simply because he or she is a  
22 member of law enforcement.

23           You should consider the testimony of members of law  
24 enforcement just as you would consider any other evidence in  
25 the case and evaluate its credibility just as you would that of



## Jury Charge

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1 any other witness.

2 It is your decision, after reviewing all of the  
3 evidence, whether to accept the testimony of a law enforcement  
4 witness and to give it whatever weight, if any, it deserves.

5 Occasionally trials attract the attention of the  
6 media, the public, casual and other interested onlookers and  
7 others. The level of public and media interest is often  
8 unpredictable and, of course, is not within the court's  
9 control.

10 After consideration of the subject matter and  
11 possible media interest in this case, the court has decided  
12 that one witness can testify and be identified in open court by  
13 a pseudonym instead of her real name.

14 Her real name is, of course, known to the court, to  
15 you and the parties. Allowing a witness to testify by a  
16 pseudonym is simply meant to protect that witness' privacy. It  
17 is also meant to ensure a fair trial to both parties.

18 The defendant did not testify in this case. Under  
19 our constitution he has no obligation to testify or to present  
20 any other evidence, because it is the government's burden to  
21 prove the defendant guilty beyond a reasonable doubt.

22 That burden remains with the government throughout  
23 the entire trial and never shifts to the defendant. A defendant  
24 is never required to prove his innocence. You may not attach  
25 any significance to the fact that the defendant did not

## Jury Charge

1081

1 testify. You may not draw any adverse inference against him  
2 because he did not take the witness stand.

3 I think there's a word there that doesn't belong. It  
4 may be the word "may."

5 You may not consider this argument against the  
6 defendant in any way in your deliberations in the jury room.

7 I will now turn to the second part of this charge and  
8 I will, as indicated at the outset, as to the legal elements of  
9 the crimes charge in the indictment.

10 That is, I will now instruct you as to the specific  
11 elements of the crimes charged, which the government must prove  
12 beyond a reasonable doubt to warrant a finding of guilt.

13 The indictment is formally charged -- the defendant  
14 is formally charged in an indictment. As I instructed you at  
15 the outset of this case, an indictment is a charge or  
16 accusation. The indictment in this case contains 20 separate  
17 counts on each of which you will be called upon to render a  
18 separate verdict.

19 You may find the defendant guilty of some counts  
20 without necessarily finding him guilty of others counts. The  
21 fact that you find the defendant guilty or not guilty of any  
22 particular count does not affect you duty to consider every  
23 element of every count.

24 The indictment alleges five acts of sexual contact  
25 and charges the same four crimes with respect to each of those

## Jury Charge

1082

1 acts. The alleged sexual acts occurred on four different  
2 dates.

3 Often, one particular act can violate more than one  
4 criminal statute. Just as you will see in a moment, there are  
5 ten charges relating to aggravated sexual abuse; five for  
6 aggravated sexual abuse and five for alleging the deprivation  
7 of Maria's right during her imprisonment to be free of  
8 aggravated sexual abuse by someone acting under color of law.

9 The conduct that constitutes aggravated sexual abuse  
10 in this case is the same conduct that, as a practical matter,  
11 constitutes a deprivation of rights.

12 Stated another way, there are effectively ten counts  
13 of aggravated sexual abuse; five for deprivation of rights and  
14 five for aggravated sexual abuse, for conduct that supports  
15 only five counts of aggravated abuse.

16 This is an example of why I caution you that your  
17 decision must not be influenced by the number of counts in the  
18 indictment but, again, only by your consideration of every  
19 element of every count.

20 The indictment uses the name Jane Doe rather than  
21 Maria, but when the indictment refers to Jane Doe, it means the  
22 woman who testified here under the name Maria.

23 As a general rule, the law holds individuals  
24 accountable only for conduct in which they knowingly and  
25 intentionally engage.

## Jury Charge

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1 A person acts knowingly and intentionally if he acts  
2 while aware that particular conduct is reasonably certain to  
3 result and not because of ignorance, mistake or accident.

4 Thus, before you can find the defendant guilty of the  
5 crimes charge, you must be satisfied that he was acting  
6 knowingly and intentionally.

7 These issues of knowledge and intent require you to  
8 make a determination about a defendant's state of mind,  
9 something that can rarely can be proved directly.

10 A wise and careful consideration of all the  
11 circumstances before you, however, may permit you to make a  
12 determination as to a defendant's state of mind.

13 Indeed, in you everyday affairs you are frequently  
14 called upon to determine a person's state of mind from his or  
15 her words and actions given in a set of circumstances. You are  
16 asked to do the same here.

17 Counts one, five, nine, thirteen and seventeen of the  
18 indictment each charge the defendant with depriving Maria of a  
19 civil right under color of law by committing aggravated sexual  
20 abuse against her in violation of Section 242 of Title 18 of  
21 United States Code.

22 Count one reads as follows: On or about December 13,  
23 2015, within the Eastern District of New York, the defendant,  
24 Carlos Richard Martinez, while acting under the color of the  
25 laws of the United States, did knowingly and willfully deprive

## Jury Charge

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1 Jane Doe of a right and privilege secured and protected by the  
2 Constitution and laws of the United States, to wit, the right  
3 to be free from cruel and unusual punishment, which includes  
4 the right to be free from aggravated sexual abuse by one acting  
5 under color of law, by causing Jane Doe to engage in a sexual  
6 act, as defined in Title 18, United States Code, Section  
7 2246(2)(B), to wit, contact between the mouth and the penis, by  
8 using force against Jane Doe.

9 Counts five, nine, thirteen and seventeen have the  
10 same legal structure. Unlike Count One, however, they refer to  
11 contact between the penis and the vulva on the following dates:  
12 Count Five, on or about December 13, 2015; Count Nine, in or  
13 about and between December, 2015 and February, 2016, both dates  
14 being approximate and inclusive, on a specific date unknown to  
15 the grand jury, other than the acts with which the defendant is  
16 charged in Counts Five and Thirteen.

17 Count thirteen, in or about January, 2016, on a  
18 specific date unknown to the grand jury, other than the act  
19 with which the defendant is charged in Count Nine and, Count  
20 Seventeen, in or about April, 2016.

21 Congress enacted Section 242 to provide for the  
22 imposition of criminal penalties on anyone who, under color of  
23 law, willfully deprives another of a right protected by the  
24 constitution of laws of the United States. The statute  
25 protects the rights of individuals under the constitution of

## Jury Charge

1085

1 laws of the United States against violations by the govern and  
2 its authorized agents.

3 In order to prove the defendant guilty of Counts One,  
4 Five, Nine, Thirteen, and Seventeen, which each charge - which  
5 charge the defendant with depriving a person of a right under  
6 color of law, the government must prove the following elements  
7 beyond a reasonable doubt.

8 First, that on or about the date specified in the  
9 count you are considering, the defendant acted under color of  
10 law.

11 Second, that in so doing the defendant deprived, or  
12 caused to be deprived, Maria of her right to be free from cruel  
13 and unusual punishment, which right is secured by the  
14 Constitution of the United States.

15 Third, that the defendant acted willfully.

16 And fourth, that the defendant's conduct resulted in  
17 aggravated sexual abuse of Maria.

18 Acting under color of law means that the defendant  
19 acted pursuant to, or was clothed with authority to perform the  
20 act under federal law.

21 If an official misuses the power vested in him by law  
22 in order to deprive someone of a right, his misconduct is under  
23 color of law, even if the law forbids what the official has  
24 done. The color of law element may also be satisfied by the  
25 fact that an official gains access to the victim in the course

## Jury Charge

1086

1 of his official duty.

2           If you find, therefore, that on or about the date  
3 specified in the count you are considering, the defendant was a  
4 federal Bureau of Prisons lieutenant and that the conduct  
5 charged in Counts One, Five, Nine, Thirteen, and Seventeen was  
6 performed by the defendant while the defendant was acting, or  
7 purporting to act, in the performance of his official duties,  
8 the first element will be satisfied.

9           With respect to the second element, that the  
10 defendant deprived the victim of a federal right, the rights  
11 encompassed by Section 242 include those protected or  
12 guaranteed by federal law or the Constitution, I instruct you  
13 that the right to be free from cruel and unusual punishment is  
14 such a right secured by the Eighth Amendment to the  
15 Constitution.

16           The Eighth Amendment guarantees the right to be free  
17 from aggravated sexual abuse by one acting under color of law  
18 to individuals serving a term of imprisonment after having been  
19 convicted of a crime, i.e., sentenced prisoners.

20           If you find, therefore, that the act performed by the  
21 defendant caused Maria to be deprived of her federal right to  
22 be free from cruel and unusual punishment, the second element  
23 will be satisfied.

24           With respect to the third element, that the defendant  
25 acted willfully, to find that the defendant acted willfully,

## Jury Charge

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1 and to convict the defendant on any of Counts One, Five, Nine,  
2 Thirteen, and Seventeen, you must find the defendant had the  
3 specific intent to deprive Maria of the right to be free from  
4 cruel and unusual punishment, conferred by the Eighth Amendment  
5 to the Constitution.

6 This does not mean, however, that the government must  
7 show that the defendant acted with knowledge of the particular  
8 provisions of the Constitution or federal law, or that the  
9 defendant was even thinking in these terms.

10 It is enough if the defendant knowingly and willfully  
11 engaged under color of law in conduct that resulted in the  
12 aggravated sexual abuse of a sentenced prisoner.

13 Aggravated sexual abuse means to engage knowingly in  
14 a sexual act with another person by using force against that  
15 person.

16 One may be said to act willfully if one acts in open  
17 defiance or in reckless disregard of a known and definite  
18 federal right, in this case, the right to be free from cruel  
19 and unusual punishment.

20 This specific intent to deprive another of a federal  
21 right need not be expressed, it may at times be reasonably  
22 inferred from the surrounding circumstances of the act.

23 Thus, you may look at the defendant's words,  
24 experience, knowledge, acts, and their results in order to  
25 decide this issue of willfulness.



## Jury Charge

1088

1           Finally, with respect to the fourth element, in order  
2 to establish that the defendant's conduct resulted in  
3 aggravated sexual abuse of Maria, the government must prove  
4 beyond a reasonable doubt that the defendant's actions caused  
5 Maria to suffer aggravated sexual abuse.

6           To satisfy this element, the government must prove  
7 beyond a reasonable doubt that the defendant committed sexual  
8 abuse of Maria.

9           Again, aggravated sexual abuse means to engage  
10 knowingly in a sexual act with another person by using force  
11 against that person. The term sexual act means, in relevant  
12 part, contact between the penis and the vulva that occurs upon  
13 penetration, however slight, or contact between the mouth and  
14 the penis.

15           The use of force means the use of such physical force  
16 as is sufficient to overcome, restrain, or injure a person.

17           Counts Two, Six, Ten, Fourteen, and Eighteen, each  
18 charge the defendant with actual sexual federal abuse in a --  
19 aggravated sexual abuse in a federal prison, specifically that  
20 the defendant caused Maria to engage in a sexual act by using  
21 force against her.

22           Count Two reads as follows: On or about December 13,  
23 within the Eastern District of New York and in the federal  
24 prison, to wit, the Metropolitan Detention Center, the  
25 defendant, Carlos Richard Martinez, did knowingly and

## Jury Charge

1089

1 intentionally cause Jane Doe to engage in a sexual act as  
2 defined in Title 18, United States Code, to wit, contact  
3 between the mouth and penis by using force against Jane Doe.

4 Counts Six, Ten, Fourteen, and Eighteen have the same  
5 legal structure. Unlike Count Two, however, they refer to  
6 contact between the penis and the vulva on the following dates.

7 Count Six, on or about December 13th.

8 Count Ten, in or about and between December '15 and  
9 February '16, both dates being an approximate and inclusive, on  
10 a specific date unknown to the grand jury, other than the acts  
11 which the defendant is -- other than the acts with which the  
12 defendant is charged in Counts Six and Fourteen.

13 And Count Fourteen is, in or about January 2016, on a  
14 specific date unknown to the grand jury, other than the act --  
15 other than the act with which the defendant is charged in Count  
16 Ten.

17 And Count Eighteen, in or about April 2016.

18 To prove the defendant committed Counts Two, Six,  
19 Ten, and Fourteen, and Eighteen, the government must prove each  
20 of the following elements beyond a reasonable doubt.

21 Force -- first, that the defendant caused the victim  
22 to engage in a sexual act, as I will define that term for you.

23 Second, the defendant acted knowingly in causing the  
24 victim to engage in that sexual act.

25 Third, the defendant did so by using force against

## Jury Charge

1090

1 the victim.

2 And fourth, that the offense was committed in a  
3 federal prison.

4 The term sexual contact means, in relevant part,  
5 contact between the penis and the vulva that occurs upon  
6 penetration, however slight, or two, contact between the mouth  
7 and the penis.

8 As I previously instructed you, to act knowingly  
9 means to act while aware that particular conduct is reasonably  
10 certain to result, and not because of ignorance, mistake, or  
11 accident, or carelessness. Whether the defendant acted  
12 knowingly may be proven by the defendant's conduct and by all  
13 the surrounding facts and circumstances.

14 The use of force means the use of such physical force  
15 as is sufficient to overcome, restrain, or injure a person.  
16 The government is not required to show that the victim  
17 resisted.

18 Finally, with respect to the fourth element, the  
19 indictment alleges that the offenses charged in Counts Two,  
20 Six, Ten, and Fourteen occurred at the Metropolitan Detention  
21 Center, MDC. You are instructed, the MDC is a federal prison.  
22 Thus, if you find that the defendant is charged in Counts Two,  
23 Six, Fourteen, Eighteen occurred at that location, this element  
24 is satisfied.

25 Counts Three, Seven, Eleven, Fifteen, and Nineteen,

## Jury Charge

1091

1 charge the defendant with sexual abuse in a federal prison,  
2 specifically the defendant caused Maria to engage in a sexual  
3 act by threatening and placing Maria in fear.

4 Count Three reads as follows. On or about December  
5 13, 2015, within the Eastern District of New York and a federal  
6 prison, to wit, the MDC, the defendant, Carlos Richard  
7 Martinez, did knowingly and intentionally cause Jane Doe to  
8 engage in a sexual act as defined in Title 18, United States  
9 Code, Section 2246(2)(B), to wit, contact between the mouth and  
10 the penis, by threatening and placing Jane Doe in fear.

11 Counts Seven, Eleven, Fifteen, and Nineteen have the  
12 same legal structure. Unlike Count Three, however, they refer  
13 to contact between the penis and the vulva on the following  
14 dates.

15 Count Seven. On or about December 13, 2015, Count  
16 Eleven, in or about and between December '15 and February 2016,  
17 both dates being approximate and inclusive on a specific date  
18 unknown to the grand jury, other than the acts with which the  
19 defendant is charged in Counts Seven and Fifteen.

20 And Count Fifteen is that -- or alleges that in or  
21 about January 16th, on a specific date unknown to the grand  
22 jury, other than the act with which the defendant is charged in  
23 Count Eleven.

24 And Count Eleven involves the date in or about April  
25 2016.

## Jury Charge

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1 To prove Counts Three, Seven, Eleven, Fifteen, and  
2 Nineteen, the government must prove each of the following  
3 elements beyond a reasonable doubt.

4 First, that the defendant caused the victim to engage  
5 in a sexual act, as I will define that term for you.

6 Second, that the defendant acted knowingly by causing  
7 the victim to engage in that sexual act.

8 And third, that the defendant did so by threatening  
9 the victim or placing the victim in fear.

10 And fourth, that the offense was committed in a  
11 federal prison.

12 As I have already instructed you, the term sexual act  
13 means, in relevant part, contact between the penis and the  
14 vulva that occurs upon penetration, however slight, or contact  
15 between the mouth and the penis.

16 As I previously instructed you, to act knowingly  
17 means to act while aware that particular conduct is reasonably  
18 certain to result and not because of ignorance, mistake,  
19 accident, or carelessness. Whether the defendant acted  
20 knowingly may be proven by the defendant's conduct and by all  
21 the surrounding facts and circumstances.

22 With respect to the third element, the government  
23 must prove that the defendant threatened the victim or placed  
24 the victim in fear. Although it may seem odd, a threat or fear  
25 that any person will be subject to death, serious bodily

## Jury Charge

1093

1 injury, or kidnaping does not qualify.

2 This is because the threat or fear or these more  
3 serious consequences, falls under a different portion of the  
4 federal criminal law that's not charged here. As such, the  
5 threat of fear must be of a harm other than these three.

6 Finally, with respect to the fourth element, the  
7 indictment alleges the offenses charged in Counts Three, Seven,  
8 Eleven, Fifteen, and Nineteen occurred at the Metropolitan  
9 Detention Center. You are instructed the MDC is a federal  
10 prison. Thus, if you find that the offenses charged in Counts  
11 Three, Seven, Eleven, Fifteen, and Nineteen occurred in that  
12 location, the element is satisfied.

13 Counts Four, Eight, Twelve, Sixteen, and Twenty  
14 charge the defendant with sexual abuse of a ward; specifically  
15 that the defendant engaged in sexual acts with Maria, who was  
16 under official detention at a federal prison and who was under  
17 the defendant's custodial, supervisory, or disciplinary  
18 authority.

19 Count Four reads as follows. "On or about December  
20 13th, 2015, within the Eastern District of New York, the  
21 defendant, Carlos Richard Martinez, did knowingly and  
22 intentionally engage in a sexual act as defined in Title 18,  
23 United States Code, Section 2246(2)(B), to wit, contact between  
24 the mouth and the penis, with Jane Doe, who was in official  
25 detention at a federal prison, to wit, the MDC, and who was

## Jury Charge

1094

1 under the defendant's custodial, supervisory and disciplinary  
2 authority."

3 Count Eight, Twelve, Sixteen, and Twenty have the  
4 same legal structure.

5 I stop here for a minute when I say, as I've said  
6 with respect to this and to the other counts, that the counts  
7 have the same legal structure. You'll have the -- you'll  
8 actually have the indictment in the grand jury -- with you in  
9 the jury, I should say.

10 So, that's the reason I'm not repeating each of those  
11 counts. I'm just telling you that they have the same legal  
12 structure. So Counts Eight, Twelve, Sixteen, and Twenty have  
13 the same legal structure.

14 Unlike Count Four, however, they refer to contact  
15 between the penis and the vulva on the following dates.

16 Count Eight. On or about December 13, 2015.

17 Count Twelve. In or about and between December 2015  
18 and December 2016, both dates being approximate and inclusive,  
19 on a specific date unknown to the grand jury, other than the  
20 acts with which the defendant is charged in Count Eight or  
21 Sixteen.

22 And Count Sixteen. In or about January 2016, on a  
23 specific date unknown to the grand jury, other than the act  
24 which the defendant is charged in Count Twelve.

25 And Count Twenty deals with, in or about April 2016.

## Jury Charge

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1 In order to prove the crimes charged in Counts Four,  
2 Eight, Twelve, and Sixteen, the government must establish the  
3 same elements beyond a reasonable doubt.

4 First, that the defendant caused the victim to engage  
5 in a sexual act, as I will define that term for you, even if  
6 the victim consented to the act.

7 Second, that the defendant acted knowingly in causing  
8 the victim to engage in that sexual act.

9 Third, that at the time alleged in the indictment,  
10 the victim was in official detention at the Metropolitan  
11 Detention Center in Brooklyn, New York.

12 And fourth, that the victim was under the custodial,  
13 supervisory, or disciplinary authority of the defendant.

14 As I have already instructed you, the term sexual act  
15 means, in relevant part, contact between the penis and the  
16 vulva that occurs upon penetration, however slight, or contact  
17 between the mouth and the penis.

18 As I previously instructed you, to act knowingly  
19 means to act while aware that a particular conduct is  
20 reasonably certain to result, and not because of ignorance,  
21 mistake, accident, or carelessness. Whether the defendant  
22 acted knowingly may be proven by the defendant's conduct and by  
23 all the surrounding facts and circumstances.

24 The term official detention means by a federal  
25 officer or employee following arrest for an offense or



## Jury Charge

1096

1 following a charge or a conviction of an offense.

2 With respect to the fourth element, the dictionary  
3 defines custody as an immediate charge -- charge and control  
4 exercised by a person or an authority.

5 Thus, the Bureau of Prisons exercises custodial  
6 authority over inmates in its prisons. Supervisory authority  
7 consists of the authority to oversee another person or persons  
8 to ensure that those persons comply with the rules,  
9 regulations, and requirements of the agency, in this case the  
10 Metropolitan Detention Center, or MDC.

11 Disciplinary authority is commonly understood as the  
12 authority to punish or correct breaches of the rules and  
13 regulations of an agency. The government need not prove the  
14 defendant had all three types of authority over Maria.

15 Therefore, if you find that the defendant had any one of  
16 the three types of authority over Maria beyond a reasonable  
17 doubt, then the government has met its burden of proof for this  
18 element.

19 However, if you find the defendant had some type of  
20 authority over the inmate, you must be unanimous in your  
21 finding as to the type of authority.

22 Now, I'm going to give you a verdict sheet. And you  
23 will be -- you will record your verdict on the verdict sheet.  
24 As you will see, unlike the indictment, the counts arranged in  
25 the verdict sheet are not arranged in precise chronological

## Jury Charge

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1 order.

2           Instead, the counts in the verdict sheet are  
3 organized by the elements of the legal offense. For example,  
4 the first five counts in the verdict sheet all refer to  
5 deprivation of rights.

6           This is the same order that I explained the counts to  
7 you, and I recommend you consider your verdict in that same  
8 order.

9           But you are not required to do that and you may  
10 render your decisions by addressing the counts chronologically,  
11 numerically, or in any other order you wish.

12           Now, I want to give you some general rules for your  
13 deliberations.

14           You're entitled to your own opinion, but you should  
15 exchange views with your fellow jurors and listen carefully to  
16 each other. While you should not hesitate to change your  
17 opinion if you are convinced that another opinion is correct,  
18 your decision must be your own.

19           Under your oath as jurors, you cannot allow a  
20 consideration of the sentence that may be imposed upon a  
21 defendant to enter into your deliberations or influence your  
22 verdict in any way. In the event of a conviction, the duty  
23 imposing sentence rests solely with me.

24           In your deliberations, you are not to consider  
25 whether you approve or disapprove of the statutes that the

## Jury Charge

1098

1 defendant is charged with violating.

2 The only question for you to consider is whether the  
3 government has proved beyond a reasonable doubt the essential  
4 elements of the crimes as I have explained them.

5 The charge here is most serious. A just  
6 determination of the case is important to the public. It's  
7 equally important to the defendant.

8 If it becomes necessary during your deliberations to  
9 communicate with me, you may send a note by a Marshal, signed  
10 by your foreperson, or by one or more members of the jury.

11 No member of the jury should ever attempt to  
12 communicate with me by any means other than a signed writing.  
13 I will never communicate with any member of the jury on any  
14 subject touching on the merits of the case, other than in  
15 writing or orally here in open court.

16 Now the testimony in this case was recorded and  
17 transcribed. If you wish to read or hear some portions of the  
18 testimony, you may make the request by a note to the Marshal  
19 and I will send the relevant portion of the transcript to you,  
20 play the relevant portion of the recording, or both.

21 I suggest, however, you be specific so that the Court  
22 can identify what testimony you are requesting and share it  
23 with you as quickly as possible.

24 Similarly, if you wish to see any of the exhibits in  
25 evidence, you may make the request by a note to the Marshal and

## Jury Charge

1099

1 I will send the exhibit to you.

2 You will also receive a copy of these instructions.

3 If you have any questions about the instructions, you may ask  
4 those questions by a note to the Marshal, and I will answer  
5 those questions, either in writing or in open court. I will  
6 consult with the parties first so the answer may not be  
7 immediate.

8 You will note from the oath that is about to be taken  
9 by the Marshal that he or she, too, as well as all other  
10 persons, is forbidden to communicate in any way or manner with  
11 any member of the jury on any subject touching on the merits of  
12 the case.

13 Bear in mind also that you should not reveal to any  
14 person, not even to me, how the jury stands on the question of  
15 the guilt or innocence of the accused until after you've  
16 reached a unanimous verdict and announced it in open court.

17 And I particularly want to emphasize, do not ever  
18 send me out a note saying we're split 7-5, 8-4, 10 to 2. Never  
19 send out a note that indicates what the vote is at any  
20 particular point in time.

21 Now, any verdict that you reach on each count, on  
22 each count, whether guilty or not guilty, must be unanimous.  
23 And so that when you check a box on the verdict sheet, that  
24 check should reflect the unanimous vote of the jurors.

25 And when you return a verdict, I'm going to poll the

## Jury Charge

1100

1 jury and ask whether that particular verdict is your verdict,  
2 just to make sure that it reflects the unanimous vote of the  
3 jury.

4 Now your oath sum -- the oath that you took, and it  
5 wasn't that long ago, your oath sums up your duty. And that  
6 is, without fear or favor, you will well and truly try the  
7 issues between these parties according to the evidence given to  
8 you in court and the laws of the United States.

9 You want to come up?

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Jury Charge

1101

1 (Conference held at sidebar.)

2 THE COURT: Are there any objections to the charge?

3 MR. RICCO: No, sir.

4 MS. SHIHATA: No, Judge.

5 MR. RICCO: Other than whatever objections  
6 (indiscernible).

7 THE COURT: Okay. Thank you.

8 (Conference concludes at sidebar.)

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## Jury Charge

1102

1 THE COURT: Okay, ladies and gentlemen, you can begin  
2 your deliberations. Yeah. I forgot.

3 The time has come for me to excuse the alternate  
4 jurors with my thanks for your time and attention. If any one  
5 of the jurors had not been able to serve, you would have been  
6 called upon to serve. So that you actually performed a  
7 significant duty by appearing here every day and I really  
8 appreciate your efforts.

9 We know who the alternate jurors are?

10 THE CLERK: (Indiscernible.)

11 THE COURT: The alternates, please don't talk to --  
12 please don't talk to anyone about the case. At least until the  
13 verdict.

14 Will you raise your right hand?

15 (Oath administered to the Court Marshals.)

16 THE COURT: Okay. Why don't you escort the jurors  
17 out?

18 Ladies and gentlemen, I intend to keep you here until  
19 about, you know, sometime around a quarter to 6:00.

20 Don't feel under any time pressure if you don't reach  
21 your verdict tonight. You'll come back tomorrow and  
22 deliberate. It's not -- time is not the critical factor. The  
23 critical factor is your careful and considered deliberation.

24 Okay. Why don't you follow the Marshal?

25 (Jury excused to begin deliberations)

## Jury Charge

1103

1 MR. RICCO: Judge, we just wanted to place on the  
2 record, that Mr. Martinez has no objection to the indictment as  
3 modified that went to the jury. Correct?

4 THE DEFENDANT: Correct.

5 THE COURT: You understand that the indictment is as  
6 the Constitution requires, that an indictment is for your  
7 protection.

8 It is a check on the power of the prosecutor and the  
9 alterations that were made are not material, and at least in my  
10 view are designed to be helpful to you. And is it agreeable  
11 that those changes were made?

12 THE DEFENDANT: Correct, Your Honor.

13 THE COURT: Okay.

14 MR. RICCO: Thank you, Your Honor.

15 THE COURT: Marshal, could -- sometimes right after I  
16 charge the jury there are notes, so if you could leave them up  
17 here for about 10 minutes, 10 or 15 minutes? That way it  
18 avoids, you know, bringing them back out.

19 (Off the record from 4:13 p.m. until 4:42 p.m.)  
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1 THE CLERK: Counsel, we're on the record.

2 The first jury note is being marked as Court Exhibit  
3 14.

4 (Court Exhibit No. 14 marked for identification.)

5 It reads, "We need Laura Riley's testimony about the  
6 investigation with Maria."

7 If you both agree, I will send in the entire Riley  
8 transcript.

9 MS. SHIHATA: We agree. The government agrees.

10 MR. RICCO: And I would ask that a Post-It be put on  
11 page 878, which I think is directly responsive to their  
12 question, but I have no objection to the entire transcript  
13 going in.

14 Oh, actually -- oh, no, no, no.

15 MS. SHIHATA: I think this is something else.

16 MR. RICCO: No, I disagree. Why don't we send the  
17 whole thing, because there were other questions.

18 MS. SHIHATA: Right.

19 MR. RICCO: Because there was questions that you  
20 asked like when did you go, when did she come back and stuff  
21 like that.

22 MS. SHIHATA: Okay. So we're sending the whole thing  
23 in without --

24 MS. ARGENTIERI: Without a Post-It.

25 THE CLERK: Okay. And I am marking that as 14A.

Proceedings

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1 MS. SHIHATA: Okay.

2 (Court Exhibit No. 14A marked for identification.)

3 (Off the record from 4:43 p.m. until 4:52 p.m.)

4 THE CLERK: Counsel, we are back on the record.

5 As you've agreed, I have a joint exhibit list which  
6 you have both initialed. I've marked this Court Exhibit 15,  
7 and you wish for me to send this back to the jury now, correct?

8 MR. RICCO: Yes.

9 MS. SHIHATA: Yes, Your Honor.

10 MR. RICCO: Yes.

11 MS. SHIHATA: I mean, yes. Yes, Ms. Susi.

12 THE CLERK: I'll take, Your Honor. That's okay.

13 I've been called worse.

14 (Court Exhibit No. 15 marked for identification.)

15 I'm just going to let them know that we're sending  
16 this back for their convenience.

17 MR. RICCO: Yes.

18 (Off the record from 4:53 p.m. until 5:36 p.m.)

19 THE CLERK: Counsel, I'm sorry. I wasn't on the  
20 record before. The second jury note has been marked as Court  
21 Exhibit 16 and they requested Exhibits 241, 242-1 and 207.  
22 You've both initialed the sheet and I've sent them the  
23 exhibits.

24 (Court Exhibit No. 16 marked for identification.)

25 MS. SHIHATA: Thank you.

Proceedings

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1 MR. RICCO: Thank you.

2 (Off the record from 5:36 p.m. until 5:47 p.m.)

3 THE CLERK: Bring in the jury, Judge?

4 THE COURT: Yes.

5 I would normally keep them later unless they told me  
6 they wanted to go but I committed myself to a dinner in honor  
7 of two of the judges of this court, which I can't get out of  
8 now.

9 (Jury enters.)

10 THE COURT: Ladies and gentlemen, as I indicated, I'm  
11 going to -- we're going to adjourn today until tomorrow at 10  
12 o'clock.

13 Don't begin deliberations until you are all there.

14 However, once all of you are there, you don't have to  
15 wait on me. You can start deliberating. Okay?

16 And, you know, I said good bye to alternates. They  
17 didn't want to go but I don't have any alternates, so that  
18 means you have to come back. Everybody has to come back, okay?

19 So, again, please, don't discuss the case with  
20 anyone, don't read about the case, don't discuss anything about  
21 -- or use social media and don't tell anybody about your  
22 deliberations.

23 (Proceedings adjourned at 5:51 p.m.)

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I, LINDA FERRARA, Certified Electronic Transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



January 17, 2018

Linda Ferrara, CET

I, CHRISTINE FIORE, Certified Electronic Court Reporter  
and Transcriber, certify that the foregoing is a correct  
transcript from the official electronic sound recording of the  
proceedings in the above-entitled matter.



January 17, 2018

Christine Fiore, CERT-410

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